117

Nelson

Maps

SUPREME COURT OF THE UNITED [illegible]ATES

No. ~~180.~~ 116.

INOCENCIO ROMERO AND AL., APP'TS,

VS.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

no grant produced both tribunals denied claim —

arg.d Jany 28 / 64

reversed

SUPREME COURT OF THE UNITED STATES.

No. 180.

INOCENCIO ROMERO AND AL., APP'TS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Title-page to transcript from comm'rs	1	v
Index " "	3	1
Petition	5	2
Deposition of A. M. Pico	7	3
" Elam Brown	13	5
" J. J. P. Mesa	15	6
" J. M. Amador	16	7
Exhibit No. 1 to Pico's deposition	18	8
Deed from J. M. Romero to A. C. Campbell	21	9
Translation of Exhibit A	22	10
Exhibit No. 2 to dep'n of Pico	25	11
Translation of Exhibit C	27	12
Exhibit No. 3 to dep'n of Pico	30	13
Translation of Exhibit No. 3	31	14
Exhibit No. 4 to dep'n of Pico	33	15
" " (translation)	34	16
" 5 "	36	16
" " (translation)	37	17
" 6 "	38	18
" " (translation)	39	18
" 7 "	40	19
" " (translation)	42	19
Opinion of comm'rs	44	20
Decree "	45	21
Secretary's certificate	46	21
Notice of appeal	49	22
Petition	50	23
Deposition of J. Romero	52	23
Answer	56	25

	Original.	Print.
Deposition of G. B. Tingley	57	26
" J. Romero, and stipulation	60	27
" C. Brown	62	28
" J. N. Tice	64	29
" J. J. P. Mesa	66	30
" J. R. Mesa	69	31
Opinion and judg't of sup. court of California	75	33
Transcript from " "	81	36
Map	104	45
Opinion, (dist. court U. S.)	111	48
Order granting stay, &c.	127	54
Affidavit of E. A Lawrence	128	54
Petition for rehearing	131	56
Affidavit of E. A. Lawrence	132	56
" J. W. Redmond	135	58
" Geo. B. Tingley	141	60
" C. B. Strode	143	61
" W. McDaniel	149	64
Deposition of E. L. Stetson	150	64
" Thos. M. Swan	152	65
" B. C. Whitman	154	66
" A. M. Wall	156	67
" C. Yeager	157	67
" J. B. Richmond	160	69
" Jas. Winston	162	69
" V. Gomez	164	70
" L. Luco	165	71
Order for rehearing	167	71
Deposition of Geo B. Tingley	169	72
" V. P. Gomez	174	74
" F. Arce	178	76
" C. B. Strode	198	85
" J. Romero	204	87
" J. A. Chavis	210	90
" F. Atoyo	218	93
" J. W. Kotlinger	221	94
" J. Argos	224	96
Exhibit A	228	97
" B	229	98
" C	230	98
Deed from J. Romero to F. P. Wilkes	233	99
" Wilkes and wife to F. Atoya	235	100
" Garcia to Jones et al, (cert. copy)	238	101
Stipulation in regard to affidavits	241	103
Deed from A. C. Campbell to B. Valencia	243	104
" B. Valencia to E. A. Lawrence	245	105
Stipulation substituting E. A. Lawrence	249	106
Order withdrawing conveyance	251	107
Deposition of J. Fallon	251	107
" M. Murray	254	109
Stipulation in relation to dep. of Frémont, &c.	255	109

	Original.	Print.
Deposition of J. C. Fremont	256	109
" H. H. Halleck	259	111
Stipulation, &c.	261	112
Deposition of T. Sibrian	261	112
" N. B. Smith	266	114
" R. Briones	270	116
Order restoring cause to calendar	279	118
Affidavit of D. P. Smith and J. Tice	279	119
Order making Smith and Tice parties	286	121
Deposition of W. Comstock	287	122
Exhibit A to dep. of Comstock	289	123
" B " "	290	123
Deposition of B. Rogers	290	123
" J. Shafer	292	124
" Jas. A. Forbes	295	125
Exhibit A to dep. of Forbes, (translation)	298	127
" "	300	127
" " (map)	308	130
" " (translation)	310	131
Deposition of J. Romero	320	135
" M. Romero	341	143
Affidavit of E. A. Lawrence	345	145
Deed from J. Romero and wife to A. J. Tice	347	146
" " Pujol et al	352	148
" Pujol and Saujurjo to A. J. Tice	357	150
" J. W. Tice to A. J. Tice, (cert. copy)	362	152
Transfer from Romero to Miranda	366	153
Stipulation in regard to deeds	368	154
Deed from J. Romero and wife to Jones et al	370	155
Stipulation	374	157
Decree rejecting claim	376	158
Order granting appeal	377	158
Appeal bond	378	159
Order granting appeal	380	160
Citation on appeal	381	160
Clerk's certificate	383	161

123

1

TRANSCRIPT

OF THE

PROCEEDINGS IN CASE NO. 654.

INOCENCIO ROMERO ET AL., CLAIMANTS,

VS.

THE UNITED STATES, DEFENDANT.

FOR FIVE LEAGUES OF LAND IN CONTRA COSTA CO.

[illegible]

[illegible]

[illegible]

Fort Townsend, [illegible] 1853.

[illegible]

Fort Townsend, [illegible] 1853.

In [illegible] Indian [illegible] was [illegible]

(Of page 8 of the transcript.)

Fort Townsend, December 21, 1853.

[illegible]

(Of pages 11 and 12 of the transcript.)

Fort Townsend, March 8, 1854.

[illegible]

(Of page 14 of the transcript.)

Fort Townsend, December 21, 1854.

[illegible]

(Of page 17 of the transcript.)

Fort Townsend, January 4, 1855.

[illegible] was submitted without argument and taken under advisement.

Fort Townsend, April 21, 1855.

[illegible] delivers the opinion [illegible]

(Of pages [illegible] of the transcript.)

[illegible]

(Of page [illegible] of the transcript.)

[illegible]

3 Office of the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California.

Be it remembered that on this twenty-eighth day of February, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Inocencio Romero, *et al.*, for five leagues of land in Contra Costa county, was presented and ordered to be filed and docketed with No. 654, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

San Francisco, *Aug.* 13, 1853.

In the same case the deposition of Antonio Maria Pico, a witness in behalf of the claimants, taken before Com'r Alpheus Felch, was filed.

(*Vide* page 5 of this transcript.)

San Francisco, *December* 21, 1853.

In case No. 654, Inocencio Romero, *et al.*, for five leagues of
4 land in Contra Costa county, the depositions of Elam Brown
and José Jesus Policarpio Mesa, witnesses in behalf of the claimants, taken before Commissioner R. Aug. Thompson, were filed.

(*Vide* pages 11 and 12 of this transcript)

San Francisco, *March* 2, 1854.

In the same case the deposition of José Maria Amador, a witness in behalf of the claimants, taken before Commississioner Thompson Campbell, was filed.

(*Vide* page 14 of this transcript.)

San Francisco, *December* 21, 1854.

In the same lease, the counsel for the claimants filed the following deed of conveyance as evidence herein, to wit:

(*Vide* page 19 of this transcript.)

San Francisco, *January* 2, 1855.

Lease No. 654 was submitted without argument and taken under advisement.

San Francisco, *April* 17, 1855.

In the same case Commissioner S. B. Farwell delivered the opinion of the board, rejecting the claim.

(Vide page 41 of this transcript.)

And the following order was made, to wit:

(*Vide* page 43 of this transcript.)

Petition.

5 To the honorable the board of the U. S. land commissioners appointed to settle private land claims in California:

The petition of Inocencio Romero, Francisco Attoyo, Alvin C. Campbell, James W. Thompson, William H. Mitchell, John M. Jones, C. Yeager, Miguel Garcia, and José Romero, respectfully represent:

That in the year 1844 Mannel Micheltorena, then governor of California, in the name of the Mexican nation, by virtue of authority in him vested, the various laws of Mexico then in force, the laws, usages, and customs of the country affecting grants of land in California, granted in full property to your petitioners, Inocencio Romero and José Romero, with their brother Mariano Romero, the lands and rancho which is unoccupied in the neighborhood of the rancho of the Señor Don Joaquin Morega, Don Lorenzo Pacheco, and Julien Will, being a remainder over and above what belongs to the owners of those ranchos, said lands being situate in the present county of Contra Costa, and more particularly described in the papers and maps relating to said grant of land, copies of some of said papers being herewith filed and the originals to be produced and proved before your honorable board.

And your petitioners further state that conveyances have been made of some portions of said lands, vesting in your petitioners the
interests following, that is to say, Inocencio Romero one-third,
6 Francisco Attoyo one-twelfth, Alvin C. Campbell one-third,
and James T. Thompson, William H. Mitchell, John M. Jones,
C. Yeager two-twelfths, and Miguel Garcia and José Romero two-twelfths.

Your petitioners further state that at the present time they are unable to produce all the various conveyances above referred to, but so soon as the same can be had they ask leave to file the same as part of this petition.

Your petitioners further state that said lands have been occupied by the original grantees and those claiming under them, from the date of said grant until the present time, and there is no conflicting claim known to your petitioners.

The evidence upon which your petitioners rely in support of this claim consists of papers and maps relating to said grant of land, to be produced and proved, and the testimony of witnesses to be produced before your honorable board.

All of which your petitioners respectfully submit for such action as the justice and nature of their claim may require.

E. O. CROSBY,
Of Counse

Filed in office February 28, 1853.

GEO. FISHER, *Secretary.*

7 *Dep. of A. M. Pico.*

OFFICE OF THE COMMISSIONERS OF LAND CLAIMS IN CALIFORNIA.

This day came before Alpheus Felch, com'r., &c., Antonio Maria Pico, a witness in behalf of claimants, Inocencio Romero *et al*, being No. 654 on the docket of the said commissioners, and being duly sworn deposed as follows:

The ass't land agent was in attendance.

Questions by Mr. Crosby, att'y for claimants.

1st question. What are your name, age, and place of residence?

Answer. My name is Antonio Maria Pico, my age is forty-three years, and my residence San José, Santa Clara county, California.

2nd question. Look on the paper here presented to you, marked "Exhibit No. 1," with the initials A. F., purporting to be an espediente in the case of the application of Inocencio Romero for a grant of land, which document is hereto attached and made a part of this deposition, and say whether you know the handwriting of Manuel Micheltorena, Manuel Jimeno, and Antonio Pico, and if so, whether their respective signatures appearing on said document are their true and genuine signatures.

Answer I know their handwriting; the signatures on said document are their true and genuine signatures, respectively; the last named is own, and was signed by me as alcalde, at the time
8 of the date of the instrument to which it is attached.

3rd question. Look on the paper now here presented to you, marked "Exhibit No. 2," with the initials "A. F.," purporting to be an espediente for a grant of lands to the same persons, which documents hereto attached and made a part of this deposition, and say whether you know the handwriting thereto, purporting to be the signatures of said Micheltorena and Jimeno, and if so, whether these are their genuine signatures.

Answer. I know them, and these are genuine.

4th question. Look on the paper now here presented to you, marked "Exhibit No. 3," with the initials "A. F.," purporting to be a petition by José Romero to the alcalde, dated May 28, 1847, with the decree of the alcalde, John Burton, and a statement by Antonio M. Pico thereon, which document is hereto attached and made a part of this deposition, and state whether you know the signatures of José Romero, John Burton, and Antonio M. Pico, and if so, whether their respective signatures appearing thereon are their true and genuine signatures.

Answer. I have examined the document. I know the signatures of those persons, and recognize these as their true and genuine signatures, respectively.

5th question. Look on the paper now presented to you, marked "Exhibit No. 4," with the initials "A. F.," purporting to be
9 signed in two places by John Burton, and dated on the 9th day of April, A. D. 1847, which document is hereto attached and made a part of this deposition, and say whether the signature of said

Burton thereto, in the two places in which it appears on said document, is the true and genuine signature of said Burton.

Answer. I have looked at it. The signatures of said Burton thereon are his true and genuine signatures.

6th question. Look on the paper now presented to you, marked "Exhibit No. 5," with the initials "A. F.," purporting to be signed by John Burton, under date of April 5, 1847, which document is hereto attached and made a part of this deposition, and state whether the signature thereto is the true and genuine signature of said John Burton.

Answer. I have examined the document. The signature of John Burton appearing thereon is the true and genuine signature of said Burton.

7th question. Did you know John Burton personally? Have you seen him write, and was he at any time in the exercise of any public office, and if so, where, and at what time?

Answer. I know him personally, and have often seen him write. He was alcalde at San José both before and since the occupation of
California by the United States. He is now dead. He was
10 acting as alcalde at that place in the year 1846 and 1847.

8th question. Look on the paper now presented to you, marked "Exhibit No. 6," with the initials "A. F.," purporting to be a deed of sale from José Romero to Francisco Garcia, dated January 15, 1847, which document is hereto attached and made a part of this deposition, and say whether you know the signatures appearing thereon, and if so, whether these are the true and genuine signatures of the persons purporting to have made the same.

Answer. I have examined the document, and I recognize the signatures of the following persons, respectively, appearing thereon as their true and genuine signatures, namely; John Burton, José Fernandez, Pedro Daly, and Antonio M. Pico. The name of José Romero and Maria Garcia were not put to the paper in my presence, but they both acknowledged to me that they made the sale of the land, as mentioned in the document.

9th question. Do you know the land claimed by the Romeros, and referred to in the above-mentioned papers? If yea, state where they are located, and what you know of the boundaries.

Answer. I know the lands. They are located in the county of Contra Costa, near Monte del Diablo. I received an order of Gover-
nor Micheltorena to put the coterminous neighbors, the Pa-
11 checos and Moraga, into possession of their lands, and to
measure the same for the purpose of separating their land from that of the Romeros. I was directed, by the same order, to put the Romeros into possession of the overplus lands not included in the premises belonging to the others. I summoned the coterminous neighbors to be there when I executed the order, but they did not appear. I did not then proceed to execute it, but afterwards I repeated the summons to them. They did not come at the time mentioned, and afterwards they told me they were sick, and that that was the reason they did not attend. In the meantime the Romeros made complaint to the governor, and I received from him a new order to

carry the former order into effect, upon which I told the Romeros to go there and settle. They did so, and built houses and corrals. They took possession in 1844.

10th question. What is the occupation of the Romeros?

Answer. They cultivate the land. They put cattle on it and have built a house. Inocencio Romero still occupies a portion of the land. The other portions are occupied by persons who have obtained rights in the same, and are carrying on extensive cultivation.

11th question. Look on the paper now here presented to you, "marked Exhibit No. 7," with the initials "A. F.," and
12 annexed to this deposition and made a part thereof, and say whether the signatures of José Bolcoff, R. M. May, and K. H. Dimmick, appearing thereon, are the genuine signatures of the persons by whom they purport to have been made, and whether you are acquainted with their handwriting respectively

Answer. I am acquainted with the handwriting of José Bolcoff, R. M. May, and K. H. Dimmick. The signatures appearing on the document presented as theirs are the true and genuine signatures of them respectively.

12th question. Do you know whether the persons named in your last answer were, at the time of the date of the last mentioned document, in the exercise of any official functions, and if so, what?

Answer. José Bolcoff was alcalde at the mission of San José, and R. M. May and K. H. Dimmick were alcaldes in the town of San José at that time.

Questions by Mr. Greenhow, associate law agent.

1st question. Was any title to the land in question from Governor Micheltorena in favor of the Romeros ever exhibited to you?

Answer. There never was.

ANTONIO M. PICO.

13 This testimony was given in the Spanish language, Mr. Fisher, secretary to the board of commissioners, acting as interpreter.

Subscribed and sworn before me at San Francisco this thirtieth day of August, A. D. 1853.

ALPHEUS FELCH.
Commissioner.

Filed in office Aug. 13, 1853.

GEO. FISHER, *Sec'y.*

No. 654.

Dep. of Elam Brown.

OFFICE OF THE BOARD OF U. S. LAND COMMISSIONERS, &c., &c.,
San Francisco, Dec'r 21st, 1853.

This day, before Com'r R. Aug. Thompson, came Elam Brown, a witness in behalf of claimants, Inocencio Romero *et al.*, on petition No. 654, and being duly sworn deposed as follows:

Present: Claimant's att'y and U. S. associate law agent.

In answer to questions, witness states his name is Elam Brown; his age fifty-seven years; residence Contra Costa county, Cal'a.

Question by claimant's att'y.

Do you know the rancho claimed in this case by Inocencio Romero and others? If so, state where it is situated and what you
14 know of its occupation, cultivation, and improvement.

Answer. I first knew said rancho in July or August, 1847. Inocencio Romero was then residing there with his family; he had a small house, in which he lived, and a small garden enclosed; he had also a stock of cattle and horses; he was then engaged in framing the timbers for erecting a large house; the corral appeared to be two or three years old. Inocencio Romero has continued to reside there to the present time. I have understood said rancho adjoins the Pacheco rancho on the northeast; Welcher ranch on the north and northwest; Moraga on the west and southwest; and the Soto grant on the east and southeast. I never heard Romero claim beyond the stream called the Nueces; I have known him to make sales to that stream, but not beyond it.

ELAM BROWN.

Sworn and subscribed before me Dec. 25, 1853.

R. AUG. THOMPSON, *Com'r.*

Filed in office Dec'r 21st, 1853.

GEO. FISHER, *Sec'y.*

15 No. 654.

Dep. of José Jesus Policarpio Mesa.

OFFICE OF THE BOARD OF U. S. LAND COMMISSIONERS, &c., &c.,
San Francisco, Dec'r 21, 1853.

This day, before Com'r R. Aug. Thompson, came José Jesus Policarpio Mesa, a witness on behalf of claimant, Inocencio Romero *et al.*, petition No. 654, and being sworn, his evidence, being in Spanish, was interpreted by the secretary as follows:

Present: Claimant's att'y and U. S. associate law agent.

Witness states his name is José Jesus Policarpo Mesa; his age fifty-four; and residence Contra Costa.

Questions by claimant's att'y.

Do you know the rancho claimed in this case by Inocencio Romero and others? If so, state where it is situated and what you know of its occupation and cultivation.

Answer. I know said rancho, and have known it since 1845; it is situated about one league from my residence in the county of Contra Costa, and is the sobrante of the Pachecos, and adjoins the ranchos of Bartolo Pacheco, Lorenzo Pacheco, Joaquin Moraga, and Welch. It has been occupied by Inocencio Romero ever since I knew it, in 1845, with his family, and is still so; he had on it at that time a house, in which he lived; he also had corrals, fences, cattle, and horses, and a

portion of the land is cultivated. He had at one time as many
16 as 300 head of cattle He has also planted some fruit trees and a small vineyard, which premises did not succeed very well. From the appearance of the improvements I judge they had been erected some time previously, I cannot say how long.

his
JOSÉ JESUS POLICARPIO + MESA.
mark.

Sworn to and subscribed before me Dec. 21, 1853.

R. AUG. THOMPSON, *Com'r.*

Filed in office Dec'r 21st, 1853.

GEO. FISHER, *Sec'y.*

Dep. of José Maria Amador.

UNITED STATES LAND COMMISSION,
San Francisco, March 2nd, 1854.

On this day, before Com'r Thompson Campbell, came José Maria Amador, a witness in behalf of claimant, Inacio Romero *et al.*, case No. 654, who, after being duly sworn, deposed as follows, his evidence being interpreted by the secretary :

1st question. What is your name, age, and place of residence?

Ans. My name is José Maria Amador; I am fifty-three years of age; and I reside in San José.

2nd question. Are you acquainted with Ignacio Romero, José Romero, and Mariano Romero? If yea, state what you know
17 of their having received a grant from the Mexican government, and where the same is situated.

Ans. I am acquainted with said persons. In 1844 said persons obtained a concession, subject to establishing of the bounderies of the adjoining ranchos. The said adjoining ranchos belonged to the following persons: William Walsh, Joaquin Moraga, Juan Bernal, Francisco Pacheco and Mariano Castro. The grant referred to was to be composed of the sobrante of the ranchos belonging to the last named persons.

3d ques. State what you know of the occupation of the lands above described by the Romeros.

Ans. In the year 1844 the Romeros went upon the land and built a wooden house, and put on it about one hundred head of cattle the same year, and about fifteen or twenty tame horses.

They also cultivated a portion of the land the same year. In the next year after they went there they built corrales, and enclosed a portion of the land, and since that time they have made improvements on the said wooden house with adobes.

Law agent present.

his
JOSÉ M^a + AMADOR.
mark

18 Sworn and subscribed before me the 2nd day of March, A. D. 1854.

THOMPSON CAMPBELL, *Com'r.*

Filed in office March 2nd, 1854.

GEO. FISHER, *Sec'y.*

Exhibit No. 1, *annexed to deposition of A. M. Pico.*

Sello quinto medio real. Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de los Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.
MICHELTORENA.

{ Adª Maritª de Monterey }
{ [SEAL.] }

MONTEREY,
Enoº. 18, *de* 1844.
Ynfe. el Srio del despacho, previos los qe. crea necesarios.
MICHELTª.

EXMO. SR. GOBERNADOR: Los cuidadanos Ynoceute, José y Mariano Romero, hermanos naturales de este departam^{to}, ante la recta juestificacion de V. E. con el mas debido respeto en derecho decimos: Que el año pp dº acompañamos á V. E. una instancia en solicitud de un parage que se halla valdio en los inmediaciones de los ranchos de los señores Dn. Joaquin Moraga, Dn. Lorenzo Pacheco y Julian
19 Will sobrante que resulta á los dueños de los ranchos espresados, y como la ya mencionada solicitud ha podecido estrabio, ocurrimos de nueve á V. E. esperando de su acrisoloda vondad y justificacion se sirva decretar á nuestro favor en caso que nuestro pedido no embaraze la propiedad particular de algun individuo.

P. T. á V. E. rendidamente pedimos y suplicamos acceda á nuestra peticion de los que le viviremos eternamente reconocido jurando no ser de malicia y lo necesario.

Monterey, Enero 18, de 1844.

YNOCENTIO ROMERO.
JOSÉ ROMERO.

dispone el Exmo Sor. Gobernador, informe el Alcalde 1 del pueblo de San José, sobre el contenido de la precedente instancia paciendo citacion de los señores Moraga, Pacheco y Wil. para que espongan el derecho que les convenga y concluido que se tuvo vuelva á esta Sria.

Monterey, Enero 18, de 1844.

MANUEL JIMENO.

Sello quinto medio real. Habilitado provicionalmente per la aduana taritª del puerto de Monterey, en el departamento de los Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cua-enta y cinco.

PABLO DE LA GUERRA.
MICHELTORENA.

[SEAL.] Habiendo sido acarendos el suplicante en esta instancia
20 y los colindantes del terreno que se solicita segun digeron estos que los S. S. Romeros no les perjudicaban en nada y que se les servian de compañia pª la seguridad de sus familias en aquella parte, tambien este juzgado tiene conocimiento que el individuo Franᶜᵒ

Soto hace seis o siete años á que pretendio el terreno que se menciona mas de este tiempo do ha hecho uso ni cultivo que le contemple con algun derecho y per lo tanto los solicitantes en esta instancia de mi parte sin considerador acreedorera la gracia que piden.

Pueblo de San José Guadalupe, Feb. 1, de 1844.

ANTONIO MARIA PICO.

Exmo Sor. Gobernador: Por el informe que dá el alcalde 1 del pueblo de San José, previa citacion de los dueños de los ranchos que colindan con el terreno que de pretenden y la buena conducta de los interesados parece que no hay inconveniente alguno pr. que se les haga la concesion q^e. pretenden si asi fuere la aprobacion de V. E.

Monterey, Feb., 4 de 1844.

MAN'L JIMENO.

Monterey, *Feb.*, 4 *de* 1844.

21 Espidase por el juez respectivo el terreno pretendido baldio como los colindantes y diga lo que resultare para concederlo á los suplicantes.

MICHELTORENA.

Filed in office Aug. 13, 1853.

GEO. FISHER, *Sec'y.*

Deeds from I. M. Romero to Alvin C. Campbell.

Know all men by these presents that I, Mariano Romero, of the county of Monterey, and State of California, have, this 15th day of March, 1854, for and in consideration of the sum of one thousand dollars, remised, released, and forever quit claim unto Alvin C. Campbell, all my right, title, and interest in and to one third part of the Rancho "Las Justos," situated in the county of Contra Costa, and State of California, said Rancho being formerly owned by Inocencio Romero, José Romero, and Mariano Romero, to have and to hold the said land together with all appurtenances thereunto belonging in any wise, this deed being given on this date from the fact that the deed made by me about one year and a half ago was, before being recorded, destroyed by fire.

In witness whereof I have hereunto set my hand and affixed my seal this 15th day of March, 1854.

his
MARIANO + ROMERO.
mark.

[SEAL.]

22 On the 8th line from the top the word "third" written before signing.

Witness: L. Archer.

State of California,
County of Santa Clara, ss:

On this March 16th, 1854, personally appeared before me, a notary public in and for said county, Mariano Romero, known to me to be

the person described, and who executed the foregoing deed of conveyance, who acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

[SEAL.] Witness my hand and notarial seal, at said county, the day and year last written.

L. ARCHER,
Notary Public.

Filed in office Dec. 21, 1854.
(Signed) GEO. FISHER, *Sec'y.*

"B."—Translation of exhibit "A."

Fifth class stamp, one sixteenth of one dollar. Issued provisionally by the maritime customs of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

PUBLO DE LA GUERRA.
[L. S.] MICHELTORENA.

23 MONTEREY, *Jan'y* 18, 1844.
Let the hon. sec'y of state report, having first taken such steps as he may deem necessary.
MICHELTORENA.

YOUR EXCELLENCY: The citizens Inocente, José, and Mariano Romero, brothers, natives of this department, before the righteous equity of Y. E., with due respect and according to law, state that last year we forwarded to Y. E. a petition soliciting a tract, which is unoccupied, in the neighborhood of the ranchos of the Señor Don Joaquin Moraga, Don Lorenzo Pacheco, and Julien Will, being a remainder, and over and above what belongs to the owners of said ranchos; and as said petition has been mislaid, we present ourselves anew to your excellency, hoping from your refined goodness and equity that you will please to decree in our favor, in case our request does not infringe upon the private property of any individual.

Wherefore we humbly solicit and pray Y. E. to accede to our petition, whereof we will ever feel grateful; and we make oath that we do not proceed through malice; adding all other requests, ratifications, &c.

Monterey, January 18, 1844.

INOCENTE ROMERO.
JOSÉ ROMERO.
MARIANO ROMERO.

His E. the governor decrees that the first alcalde of the town of San José report upon the contents of the foregoing petition, 24 summoning the Señor Morega, Pacheco, and Will, so that he may allege whatever cause they may deem proper, and all being concluded, let the papers be returned to this office.

Monterey, Jan., 1844.

MANUEL JIMENO.

Fifth class stamp 1/16 of 1 d., issued provisionally by the maritime customs of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

PABLO DE LA GUERRA.
[L. S.] MICHELTORENA.

The petitioners in this case, and the owners, owners of lands bounded by the tract which is claimed, having been confronted, the latter said that the Señiors Romero did not prejudice them in any way, but on the contrary they desired them to be their neighbors, both for company and for the additional security of their families in that region; it has also come to the knowledge of this tribunal that one Francisco Soto claimed the tract in question some six or seven years ago. But in this time he has neither used nor cultivated it in any way to gain any right thereto; wherefore the petitioners appear to me entitled to the favor they ask.

Town of San José Guadalupe, Feb'y 1, 1844.

ANTONIO MA. PICO.

YOUR EXCELLENCY: According to the report of the first alcalde of San José, after summons to the owners of the ranchos that
25 bound the tract in question, and as to the good character of the
claiming parties, it would seem there is no obstacle to making the grant they claim if your excellency approves of it.

Monterey, Feb. 4, 1844.

Let the judge of the proper district take measurement of the unoccupied land that is claimed in presence of the neighbors, and certify the result, so that it may be granted to the petitioners.

MICHELTORENA.

Filed in office Feb'y 28, 1853.

GEO. FISHER, *Sec'y.*

Exhibit No. 2, *A. F., annexed to dep. of A. M. Pico.*

Sello quinto medio real. Habilitado provisionalmente por la aduana maritima del puerto de Monterey en el Departm^to^ de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA,
PABLO DE LA GUERRA.

MONTEREY, 23, *de* 1844.

Infe. el Srio del Dispacho.

MICHELTORENA.

EXMO. SOR. GOBERNADOR: Los Ciudadanos, Inocencio Mariano y José Romero vecinos de este distrito ante la justificacion de V. E. con el debido respeto y como mas haga lugar en derecho esponemos: que habiendo ocurido al Sor. Juez del
26 pueblo de San José á efecto de que procediese á la medicion del
terreno que pedide que V. E. dispuso en decreto de 4 del mes po. po. no pudo cumplir en esta superior determinacion por motivo de hallar se ausenter y ocupador los colindantes que indicamos; y

como ha de suceder Exmo. Sor. que estos individuos no se reunar muy pronto por lo primero ó segundo nos vemos en la necesidad de venir á suplicar á V. E. nos haga la gracia de favorecernos concediendonos el parage espresado ya sea provisionalmente á como V. E. tuviere á bien á fin de que puedamos (antes que se pase el tiempo) empezar hacer nuestros labores y otros trabajos puer los colindantes estan conformes con los limiter que citamos y deseosos que vayamos á ser sur vicinos como consta por el informe del referido juez y el del Sor Srio del despacho que obran on el éspediente que á V. E. debidamente acompañamos como igualmente la solicitud que contiene el resultado á que nos contraemos. Por tanto á V. E. rogamos provea como pedimos de lo cual recibiremos gracia y justicia. Jurando lo necessario.

Monterey, Marzo 21, de 1844.

INOCENCIO ROMERO.
MARIANO ROMERO.
JUAN ROMERO.

27 Sello quinto, medio real. Habilitado provisionalmente por la adauana maritima del puerto de Monterey, en el departamento los Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.
[SEAL.] MICHELTORENA.

EXMO SEÑOR GOBERNADOR: Creo por conveniente que se cumplo con lo que ha dispuesto S. E. pa. que se mida el terreno pretendido, y luego que esto se verifique, con la menor demor que sea posible, puede occurir en el Sr. Romero, en union del Sr. Soto, quien dice tienen derecho al mismo terreno. El Sup^{r} discernim^{to} de V. E. resolvera lo mejor.

Monterey, 23 de Mzo, de 1844.

MAN'L JIMENO.

MONTEREY, *Mzo* 23, *de* 1853.

Obrese en un todo conforeme el anterior informe.

MICHELTORENA.

Filed in office Aug. 13, 1853.

GEO. FISHER, *Sec'y.*

"D."—Translation of Exhibit "C."

Fifth class stamp, one-sixteenth of a dollar; issued provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

28 MICHELTORENA.
[L. S.] PABLO DE LA GUERRA.

YOUR EXCELLENCY: The citizens Inocencio, Mariano, and José Romero, residents of this district, before the equity of Y. E., with due respect, and to the full intent of the law, do set forth that we appeared before his honor the judge of the pueblo of San José to obtain

that he should proceed to the measurement of the tract of land which we have solicited according to the tenor of Y. E. decree of the 4th ulto., but that he was unable to execute that superior order, for the reason that the owners of the neighboring lands, whom we indicated, were absent and engaged, and as it will happen, Y. E., that those individuals will not meet very soon for one or other of the two said causes, we see ourselves in the necessity of soliciting Y. E. to do us the favor of granting to us the said tract, either provisionally or in such a manner as Y. E. shall deem fit, so that we may (while it is yet time) commence our planting and other works; since the owners of neighboring lands are satisfied with the boundaries we state, and desirous of having us for neighbors, as appears from the report of the judge aforementioned, and that of the hon. secretary of state, contained in the official document which we duly enclose to your
29 excellency, together with the petition that contains the result to which we limit ourselves.

Wherefore we solicit your excellency to accede to our request, thus conferring favor and justice, and we make oath according to law.

Monterey, March 21, 1844.

INACIO + ROMERO.
MARIANO ROMERO. ×
JUAN ROMERO. ×

Fith class seal, one-sixteenth of one dollar; issued provisionally by the maritime customs of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

[L. S.] MICHELTORENA.
PABLO DE LA GUERRA.

YOUR EXCELLENCY: I think that Y. E's order should be carried into effect in regard to the measuring of the land that is claimed; and as soon as this is accomplished with the least practicable delay, Señor Romero can present himself joined with Señor Soto, who says that he has a right to the same tract.

Your excellency's superior discernment will determine what is best.

Monterey, March 23, 1844.

MANUEL JIMENO.

Let everything be done agreeably to the foregoing report.

MICHELTORENA.

30 Filed in office Feb'y 28, 1853.

GEO. FISHER, *Sec'y.*

H. H. No. 3, A. F., annexed to dep. of A. M. Pico.

Habiendo sido llamado el Sor. Don Antonio Maria Pico el persona que esta alcalde en el año de 1844, y habiendo preguntado sobre la materia de lor Sres. Romeros tocantes á los colindantes si se pudiera sentar en dicho sitio pretendido llamado los puntos, el Sor. Don Joaquin Moraga y el Sor. Don Lorenzo Pacheco dijeron que por

su parte se los podia concederse á los Sres. Romeros el sobrante de terreno que nor ha pertenesca.

Pueblo de San José de Gaudalupe, 27 de Mayo, de 1847.

ANTONIO MARIA PICO.

Jurada ante mi, juez de paz.

JOHN BURTON.

OFFICINA DEL PUEBLO DE SAN JOSÉ, 28 *de Mayo, de* 1847.

Procedio el interesado conforme el orden del supremo gobierno y si algunos de los colindantes hará embaraso, que si manda la medicion de sus terrenos segun lo mandado del
31 gobierno y en caso que no quieren cumplir siga U. con su trabajo.

JOHN BURTON.

SOR. ALCALDE CONSTITUCIONAL:

Él que subscribe esta sumisa representacion tiene el honor de recurrir á V. fundado en el otro de peticion que á todo Ciud°. le concede la ley y asi como el Exmo. Sor. gobernado de este departamento recomiendo en sus proclamas que se atienda con justicia á todo Ciud°. en sus peticiones y reclamos.

Desde el año cuarenta y cuatro se paso una orden del Gobierno anterior á este jusgado para que se diesen las medidos del terreno llamado los sientos que pedimos en compañia yo y mi hermano Inocencio Romero con preba citacion de los colindantes lo que esta presente no se á verificado lo que si suplicamos á V. se serva con primer magistrado de este juzgado se aga una informacion ó se nos de un testimonio por el alcalde que fué en el año cuarenta y cuatro de los informes que se pasaron al gobierno de que se nos podra agraciar con otras tierras. P. T. suplicamos se sirva proveer con piedad á favor del que reclama.

Filed in office Aug. 13, 1853.

Translation of Exhibit No. 3, A. F.—Recorded in Ev. Book, vol. 17, *p.* 492.

To the Constitutional Alcade:

The subscriber of this humbly representation has the honor to apply to you, founded on the right of petition which the law grants every citizen, and as likewise his excellency the governor of this department recognises in his proclamation that every citizen be justly attended to in
32 his petition and claims. As early as the year 1844, there was sent an order from the former government to this justices' court, that there should be made a mesuration of the land called Juntas, which we asked for. I, together with my brother, Inocencio Romero, after a previous summons of the bordering land owners, which up to the present time has not been carried out. What we now beg of you is, that you will please, as first magistrate of this justice's court, to mark out a report that we be given a testimonial of the reports which in the year '44 were sent to the government, so that we can be granted

said lands. Wherefore, we pray you to be pleased to provide charitably in favor of the claimant.

Puebla de San José Guadalupe, 28th of May, 1847.

JOSÉ ROMERO.

[Marginal.]

OFFICE IN PUEBLO DE SAN JOSÉ, 28*th May*, 1847.

The interested party will proceed according to the order of the supreme government, and if any of the bordering land owners shall make any impediment a measurement of their lands is ordered according to the order of the government, and in case they do not wish to comply you will pursue your work.

JOHN BURTON.

33 Don Antº Mª Pico, the person who was alcade in the year 1844, having been called, and having been questioned on the subject of Romero, regarding the bordering land marks, if they could settle on said land claimed, called Las Juntas: Don Joaquin Moraga and Don Lorenzo Pacheco declared that, for their part, the surplus of land which does not belong to them can be granted to Mrs. Romero.

Puebla de San José de Guadalupe, 29th of May, 1847.

ANTO. MARIA PICO.

Taken before me, a justice of the peace.

JOHN BURTON.

Exhibit No. 4, A. F., annexed to dep. of A. M. Pico.

Sea de acuerdo que en el dia 9 de Abril, 1847. Ordena á los interesados de tomar posesion de los terrenos mencionados segun el orden del gobierno y á mas ordeno que en caso que se esponga algunos colindantes que se manda la medicion de sus terrenos.

JOHN BURTON.

El E. S. Gobernador ha dispuesto que se proceda á la medicion del terreno sobrante que solicitan los Señores Romero y que si fuere necesario medir los ranchos inmediatos que tambien se efectue la espresada medicion en la inteligelencia que los que solgan agraciados, seran los que satisfagan el corte pendiente de los gastos.

Y en cumplimiento de otra superior orden lo digo á V. para su conocimiento egecucion.

34 Dios y Libertad, Monterey, Marzo 23, de 1844.

MANUEL JIMENO,

Secretario del Despacho, Sor Alcalde 1°. *del Pueblo de San José.*

I do hereby certify that the above is a true copy of the original found in this office. In witness whereof, I have hereunto set my hand and seal this 9th day of April, A. D. 1847.

JOHN BURTON, *Magistrate.*

P. D. para este documento al S. Don José Miguel Garcia y pasa que conste lo firmo.

San José 9 de Mayo, de 1849.

JOSÉ ROMERO.

Filed in office Aug. 13, 1853.

GEO. FISHER, *Sec'y.*

Translation of exhibit No. 4, *A. F. dep.—Recorded in ev. B., vol.* 17, *page* 493.

His excellency the governor has ordered that there be proceeded to the mensuration of the surplus of land solicited by Messrs. Romero, and if it should be necessary to measure the immediate ranchos that this measurement also be executed, in the understanding that those parties who may become grantees shall be those that satisfy the cost springing out from the expenditures. And in compliance with 35 said superior order, I communicated it to you for your information and execution. God and liberty.

Monterey, March 23rd, 1844.

MANUEL JIMENO,
Secretary of State.

To the 1st Alcalde *of the pueblo of San José.*

[In the margin.]

Be it done accordingly on the 9th of April, 1847.

The interested parties will proceed to take possession of the mentioned lands according to the order of the government; and I further order that in case any bordering land owner demanding it, a mensuration of his lands be ordered.

JOHN BURTON, *J. P.*

[In English.]

I do hereby certify that the above is a true copy of the original found in this office. In witness whereof, I have hereunto set my hand and seal this 9th day of April, A. D. 1847.

JOHN BURTON, *Magistrate.*

Be this document sent to Don José Miguel Garcia, and to attest it I sign.

San José, 9th of May, 1849.

JOSÉ ROMERO.

36 *Exhibit No.* 5.

Presentado y admitido que se pasen lo mas pronto posible á cumplir con el orden del superior gobierno para su debido cumplimiento.

Oficina del magistrado del Pueblo de San José, 5 de Abril, de 1847. JOHN BURTON.

Sor. Juez de Paz del Pueblo de San José Guadalupe: José Romero ante V. con el mayor respeto, diciendo que hace algunos años que tenga solicitando un pedazo de terreno en el cañada de San Ramon y colinda con los terrenos que pertenece al Sr. Mariano Castro tomando el sobrante de lo que lo espresa en el titulo del Sor. Castro (que son des leguas) y entonces colindando con los terrenos del dijunto Wil por el Norte. Sor. Juez. El Exmo Sor. Gobernador mando que me mediese los terrenos del Sor. Castro y que si nos diera posesion del sobrante pero nunca se ha cumplido por no haber lugar los papeles debe estar en el juzgado de este pueblo que conste del presente orden, Sor. Juez humildemente esponga á V. que somos dos hermanos y con gran numero de familia teniendo algunos bienes de campo y sin tener un pedazo de terreno por criarlos por lo cual suplicamos lo mas pronto que se puede para que podamos ir á fincar y meter nuestros bienes. P. T. A. V. S. Rendidamente suplico de proveer como llebo pedido que es gracia que espero de V. sus incuores subititos.

JOSÉ ROMERO + CRUZ. INOCENTE ROMERO.

37 Pueblo de San José 31 de Marzo de 1847.

Filed in office Aug. 13, 1853.

GEO. FISHER, *Sec'y.*

Translation of exhibit No. 5, *A. F. Dep.—Recorded in Ev. B, vol.* 17, *p.* 694.

Sir justice of the peace of the pueblo of San José de Guadalupe:

José Romero, with the utmost respect represent before you, that there are some years since I solicited a piece of land in the Cañada de San Ramon, and bordering upon the lands belonging to Don Mariano Castro, taking the surplus of which the title deed of Mr. Castro, spears, (which are two leagues,) and then bordering on the lands of the defunct vil to the north. Nor, sir, his excellency the governor ordered the lands of Mr. Castro to be measured, and that we should be given possession of the surplus; but it has never been complied with, as there has never been any occasion. The papers to prove this order ought to be in the justice's court of this pueblo.

Sir, I humbly represent to you that we are two brothers, and with a numerous family, having some country stock, without having any piece of land wherever to raise cattle. Wherefore we pray you to provide for us as soon as you can, that we may be enabled to go
38 to retain and locate our stock.

Therefore I humbly pray you to provide as I have asked, which is a favor I expect of you.

Your humble servants,
JOSÉ ROMERO, + his cross.
INOCENCIO ROMERO, " " "

PUEBLO OF SAN JOSE, 31*st of March*, 1847.

[In the margin.]

This having been presented, it is admitted that as soon as possible there be proceeded to comply with the order of the superior govern't for its due fulfillment.

Office of the magistrate of the pueble of San José, 5th April, 1847.

JOHN BURTON, *J. P.*

Exhibit No. 6, *A. F., annexed to dep. of A. M. Pico.*

En el pueblo de San José Guadalupe de la Alta California, á los quince dias del mes de Enero del año de mil cuatro cientos cuarenta y siete anti me Juan Burton y ante los testigos presentes, Don Guillermo Castro, Don Pedro Davis, y Don José Fernandez, comparecieron los Señores José Romero y Francisco Garcia, y el primero dijo parto donacion de la mitad del terreno que tiene solicitado en compañia de Inocencio Romero á d'ho Garcia por el valor de sesenta pesos (60)
39 que tiene recibido y para que en lo venidero no puedan los heredores de José Romero tener accion de d'ho parte del mencionado terreno lo firmaron José Romero su esposa Maria Garcia y los testigos dichos, que dando hambor sujetos á que si el gobierno lo consede en propiedad y de lo contrario perdera gracia lo mismo q. Romero sin tener accion de clamar el dinero dado. Para lo cual circumstancia ante pongo mi autoridad firmandolo y que sea valedera esta escritura.

JOSÉ ROMERO.
JOHN BURTON, *Alcalde.*

Maria Garcia, *como testigo.*
José Fernandez, *como testigo.*
Pedro Davis, *como testigo.*

Queda tomada razon en el libro de solares en el año de 1849.
Fojas treinta y cuatro.

ANTONIO MARIA PICO.

Filed in office Aug. 13, 1853.

GEO. FISHER, *Sec'y.*

Translation of Exhibit No. 6. *A. F.*

In the pueblo of San José Guadalupe, in Upper California, on the 15th day of January, in the year one thousand "four" hundred and forty-seven, (probably ought to be 1847,) before one Juan Burton and the present witnesses, Don Guillermo Castro, Don Pedro Davis, and Don José Fernandez, appeared José Romero and Francisco
40 Garcia, and the first said that he made a donation of half of the land he had solicited jointly with Inocencio Romero to said Garcia, for the consideration of sixty dollars, which he has received. And that in future the heirs of José Romero may not have any cause of action to said part of said land, José Romero, his wife, Maria Garcia, and the said witnesses subscribed hereunto, both parties remaining subject to that if the government grant it in ownership, and in a contrary case, Garcia will loose equally with Romero, without having cause of action to reclaim the money given.

In evidence whereof, I subscribe officially, so that this deed may be valid.

JOSÉ ROMERO. +
MARIA GARCIA. +
JOHN BURTON, +
Alcalde.

In witness: José Fernandez,
Pedro Davis,
As witnesses.

Entered in the book of lots in the year 1849, in folio 134.

ANTO. MA. PICO,
Alcalde.

Exhibit No. 7.

JUZGADO DEL PUEBLO DE SAN JOSÉ DE GUADALUPE.

Habiendo algunos disputos en conformo art dentro las letras
41 dentro de Domingo Peralta y José Romero y Inocencio Romero
y por cuanto dichos asuntos han sido una vez determinado por el gobierno D^{n} Manuel Micheltorena, gobernador de California, ahora es mandado por esta corte de justicia que los dichos linderos seran establecidos y adjustado segun la manera especificada por los ordenes del gobernador, con fecha de 23 de Marzo de 1844. Dado en Monterey y amas es ordenado de este corte que el S'or S. C. dyman el autorisado agrimensor del gobierno si procederá lo mar pronto que sea practicable al lugar, para que corre dichos lineas y los dichos partidos interesados seran presentes con sus documentos legales para dicho agrimensor para que dicho individuo procedera y determinara sobre el asunto.

Y amas es advertido que el persona que sea projetado de dicho justicia pagare todos los gastos segun el decreto del espresado gobernador.

Dado debajo mi mano este 27 dia de Diciembre de 1848.

K. H. DIMMICK,
1*st Alcalde.*

El que subscribe abajo desde que ha vendido su propiedad del ter-
reno de Don José Miguel Garcia p^{r} mil pesos en plata y entre-
42 gado mis documentos y terrenos d'ho S'or Garcia y recibido los
mil pesos hoy el dia ante el Sr. alcalde y presente testigos de ass'ta y para que conste lo formo ante sitado juzgado de S. José á q. de Mayo de 1849.

JOSÉ ROMERO BENDE,
Su Cruz.

Queda obligado de todo tho hai alguno reclamo sobre sitado terreno quedo responsable devolver los mil pesos ó mas, digo ante s'or alcalde y presentes testigos.

José Romero, pongo cruz en señal de firma, A. N. Smith. Ayaton Ruis, José Romero, alcalde del distrito de San José·

Queda tomada razon en el libro de solares á fojas 186.

R. M. MAY,
Alcalde.

Filed in office Aug. 13, 1853.

GEO. FISHER, *Sec'y.*

Translation of Exhibit No. 7. "*A. F.*"

JUSTICE'S COURT OF THE PUEBLO SAN JOSÉ GUADALUPE.

There being some disputes as to the boundaries between Domingo
Peralta and José Romero and Inocencio Romero ; and whereas
43 said matters have once been determined by the Governor Michel-
torena, governor of California:

Now, therefore, it is ordered by this justice's court that said boundaries be established and adjusted in the manners specified by the orders of the governor dated 23 March, 1844, given in Monterey.

And it is further ordered by this court that Mr. L. C. Lyman, the authorized surveyor of the government, proceed as soon as practicable to the place to run said boundaries, and said interested parties will be present with their legal documents for said surveyor, so that said individual proceed and determine this matter.

And it is further observed that the person who may profit by said act pay all the costs, according to the decree of said governor.

Given under my hand this 27 day of December, 1847.

H. S. DIMIRICK,
1st Alcalde.

The undersigned says that he has sold his ownership to the land to D. José Mig'l Garcia for one thousand dollars in silver coin, and I have delivered my documents and the land to said Garcia and received the thousand dollars to-day before the alcalde and present witnesses, 44 and in evidence thereof I sign before said justice's court of San José, on the 9th of May, 1849.

his
JOSÉ + ROMERO.
mark.

Bende.

I bind myself forever that if any claim should arise to said land I am responsible for the return of the thousand dollars, which I declare before the alcalde and present witnesses.

JOSÉ ROMERO. +

I put a cross signification of a signature.

AGATON RENS,
Alcalde of the District.

Witness: N. B. Smith,
José Bolcoff,
of San José.

Entered in book of lots on folio 186.

R. M. MAY, *Alcalde.*

Opinion by Com'r Farwell.

Inocencio Romero *et al.*
vs.
The United States.
} Lands in Conta Costa county. No. 654.

In this case the petitioners have placed on file copies of an espediente and proceedings preliminary to the issue of a grant for a surplus of several claims therein named. The first espediente dated the 18th day of January, 1844, and a correspondence kept up on the 44 subject with the several departments of state to the year A. D. 1849.

But it does not appear that any grant was ever ~~issued to any~~ person, and no equitable right appears on the part of any of the petitioners to a confirmation.

We are of the opinion that the claim is invalid, and a decree will be entered adverse to the petition.

Rejected.

Filed in office April 17, 1855.

GEO. FISHER, *Sec'y.*

Decree.

INOCENCIO ROMERO *et al.*
vs.
THE UNITED STATES. } Lands in Contra Costo county. 654.

In this case, after hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioners is not valid; it is therefore decreed that the application for a confirmation thereof be denied.

R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office April 17, 1855.

GEO. FISHER, *Sec'y.*

46 *Order.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby—

Ordered, that two transcripts of the proceedings and of the decisions in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's certificate.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claim in the State of California, do hereby certify the foregoing forty-three pages, numbered from 1 to 43, both inclusive, to contain a true, correct and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 47 654, on the docket of the said board, wherein Inocencio Romero *et als.* are the claimants against the United States for the place known by the name of five leagues of land in Contra Costa county.

In testimony whereof, I have hereunto set my hand and affix my
[SEAL.] private seal, (not having a seal of office,) at San Francisco, California, this fifteenth day of October, A. D. 1855, and of the independence of the United States the eightieth.

GEO FISHER, *Sec'y.*

Endorsed: Filed October 23, 1855.

J. A. MONROE, *Clerk.*

Notice of appeal.

THE UNITED STATES *v.* INOCENCIO ROMERO & } On appeal from the U. S. land commission. Case No. 654.

Please take notice that the claimants in the above case will prosecute an appeal therein.

CROCKETT & PAGE,
Of counsel for claimants.

To J. A. MONROE, *Clerk.*
Endorsed: Filed Jan'y 10, 1856.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

Notice of appeal.

In the district court of the United States, northern district of California.

INOCENCIO ROMERO *et al.* *vs.* THE UNITED STATES. } No. 304 of transcript.

You will please take notice that the claimants in this case intend to prosecute an appeal to this court from the decision of the
50 board of United States land commissioners, rejecting their claim.

Yours, &c.,

CROCKETT AND PAGE,
Atty's for Appellants.

To SAM'L W. INGE, Esq., *U. S. Dist. Court,*
And JNO. A. MONROE, Esq., *Clerk of said court.*

Endorsed: Service accepted March 12th, 1856.

A. GLASSELL,
Ass't U. S. Dist. Att'y.

Filed March 12th, 1856.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

Petition.

In the district court of the United States, northern district of California.

Inocencio Romero, Francisco Altoyo, Alvin C. Campbell, James W. Thompson, William H. Mitchell, John M. Jones, C. Yeager, Miguel Garcia, and José Romero,
vs.
The United States.

To the honorable Ogden Hoffman, jr., judge of the district court of the United States for the northern district of California:

51 Your petitioners, above named, respectfully show that heretofore, viz: on the twenty-eighth day of February, A. D. 1853, they filed before the United States board of land commissioners for the State of California, a petition for the confirmation of their claim to a tract of land situate in the northern district of California, and in the county of Contra Costa, for a description of which land, and the title thereto, reference is hereby made to said petition; that after hearing said petition, with the proofs and argument of counsel in the cause, the said board, on the seventeenth day of April, A. D. 1855, rejected said claim as invalid.

That on the twenty-third day of October, A. D 1855, a transcript of the record was filed in this court, by virtue whereof, and by force of the statute in that case made and provided, an appeal to this court was duly effected; that on the 12th day of March, A. D. 1856, your petitioners filed in this court a notice of their intention to prosecute said appeal. Your petitioners therefore pray that the decision of said board be reversed, and that this court confirm their title to said land, to which confirmation your petitioners allege they are justly and lawfully entitled.

CROCKETT AND PAGE,
Attorneys for petitioners.

Endorsed: Filed March 12th, 1856.
JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

52 *Dep. of Inocencio Romero.*

United States district court, northern district of California.

San Francisco, *Feb'y 11th*, 1857.

On this day, before John A. Monroe, commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Innocentio Romero, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by Clinton Palmer, a sworn interpreter.

Present: E. A. Lawrence, counsel for the claimants, and Wm. Blanding, esq., U. S. dist. att'y.

Questions by claimant.

What is your name, age, and occupation, and place of residence?

Answer. My name is Innocentio Romero; age, 52 years, and residence, the Rancho de la Purissima.

2nd. Are you acquainted with the Romero rancho, in Contra Costa county; and if so, to whom was the same granted, and by what governor?

53 Answer. I am. It was granted to me and my brothers by Governor Micheltorena.

2nd. What were the boundaries of the land granted?

Answer. At the south by the rancho of Castro and Pacheco, on the north by the Welsh rancho, and on the west by the rancho Morraga, and on the east by the rancho of Juana Pacheco. The land granted was a sobrante of those ranchos. I asked for all the sobrantes, but, though their lands did not extended to the arroyos, I only took the land included by the arroyos.

3rd. Who had charge of the title papers of the rancho?

Answer. An American by the name of Tingly or Hinckley—I don't know which. I gave them to a native by the name of Francisco Garcia to give them to the American I alluded to. The native was a partner, at the time, of mine, my brother having sold to him. I was sick at the time.

4th. Why did you give them?

Answer. I gave them to the American, who was a lawyer, for the purpose of having them submitted to the land commission.

54 5th. What became of the Hinckley, and have you ever seen the title papers since?

Answer. The man left the country, and I have never seen the title papers since, and I don't know where the papers are.

6th. Did you ever live on the rancho; and if so, how long?

Answer. I did live there ten or eleven years. I had four houses on it, and a portion of the land was cultivated, and I had horses, cows, and oxen on the place.

Cross-examined.

Witness, sworn on his *voire dire*, says:

Have you any interest in this land; and if not, to whom have you conveyed it?

Answer. I have no interest in it; I sold my interest three years ago to Domingo Pujol; I gave him a bill of sale or deed; it was recorded at Martinez.

Question. Describe the papers you gave to Garcia for Hinckley.

Answer. They were the original title papers given to me by the governor, and the grant of the governor was among them, and

55 I am certain of that fact. I have heard Garcia is in Guaymas; he has left California.

Question. Has Garcia any claim in this land?

Answer. He has not; he has sold out. José Romero sold to Garcia all his right and title, some time about eight or nine years ago; I don't recollect the time.

Question. Was the land ever measured and possession given?

Answer. The alcalde wrote to Brown to measure the land, and Brown measured and marked the boundaries, and I was in possession; the only boundaries measured was the southern boundary. The grant was made a short time after Micheltorena arrived and acted as governor, some 14 or 15 years since.

Question. Had you charge of the papers before you gave them to Garcia?

Answer. I did—I and my brother.

Question. From whom did you and your brother get the grant?

Answer. The secretary of Micheltorena delivered them to me in person. Arce was the secretary's name. I received the papers in Monterey in the presence of the governor. I have received all the money due me, and have no mortgage on the land.

56 IGNOCENCIO ROMERO.

Sworn and subscribed to before me this 11th of Feb'y, 1857.

JNO. A. MONROE,
U. S. Comm'r.

Endorsed: Filed Feb'y 11th, 1857.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Answer.

In the district court of the United States for the northern district of California.

THE UNITED STATES
ads. } D. C. 304. L. C. 654.
INOC. ROMERO *et al.*

The United States, by their attorney, deny the validity of the title set out in the petition of the appellants, and pray that the decision of the U. S. land commission be affirmed, and that the said title be decreed invalid.

WM. BLANDING,
U. S. Att'y.

SAN FRANCISCO, *Feb'y* 12, 1857.

Endorsed: Filed Feb'y 12th, 1857.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

his evidence being interpreted by Clinton Palmer, a sworn interpreter.

Present: E. A. Lawrence, counsel for the claimants, and Wm. Blanding, esq., U. S. dist. att'y.

Questions by claimant.

What is your name, age, and occupation, and place of residence?

Answer. My name is Innocentio Romero; age, 52 years, and residence, the Rancho de la Purissima.

2nd. Are you acquainted with the Romero rancho, in Contra Costa county; and if so, to whom was the same granted, and by what governor?

53 Answer. I am. It was granted to me and my brothers by Governor Micheltorena.

2nd. What were the boundaries of the land granted?

Answer. At the south by the rancho of Castro and Pacheco, on the north by the Welsh rancho, and on the west by the rancho Morraga, and on the east by the rancho of Juana Pacheco. The land granted was a sobrante of those ranchos. I asked for all the sobrantes, but, though their lands did not extended to the arroyos, I only took the land included by the arroyos.

3rd. Who had charge of the title papers of the rancho?

Answer. An American by the name of Tingly or Hinckley—I don't know which. I gave them to a native by the name of Francisco Garcia to give them to the American I alluded to. The native was a partner, at the time, of mine, my brother having sold to him. I was sick at the time.

4th. Why did you give them?

Answer. I gave them to the American, who was a lawyer, for the purpose of having them submitted to the land commission.

54 5th. What became of the Hinckley, and have you ever seen the title papers since?

Answer. The man left the country, and I have never seen the title papers since, and I don't know where the papers are.

6th. Did you ever live on the rancho; and if so, how long?

Answer. I did live there ten or eleven years. I had four houses on it, and a portion of the land was cultivated, and I had horses, cows, and oxen on the place.

Cross-examined.

Witness, sworn on his *voire dire*, says:

Have you any interest in this land; and if not, to whom have you conveyed it?

Answer. I have no interest in it; I sold my interest three years ago to Domingo Pujol; I gave him a bill of sale or deed; it was recorded at Martinez.

Question. Describe the papers you gave to Garcia for Hinckley.

Answer. They were the original title papers given to me by the governor, and the grant of the governor was among them, and

55 I am certain of that fact. I have heard Garcia is in Guaymas; he has left California.

Question. Has Garcia any claim in this land?

Answer. He has not; he has sold out. José Romero sold to Garcia all his right and title, some time about eight or nine years ago; I don't recollect the time.

Question. Was the land ever measured and possession given?

Answer. The alcalde wrote to Brown to measure the land, and Brown measured and marked the boundaries, and I was in possession; the only boundaries measured was the southern boundary. The grant was made a short time after Micheltorena arrived and acted as governor, some 14 or 15 years since.

Question. Had you charge of the papers before you gave them to Garcia?

Answer. I did—I and my brother.

Question. From whom did you and your brother get the grant?

Answer. The secretary of Micheltorena delivered them to me in person. Arce was the secretary's name. I received the papers in Monterey in the presence of the governor. I have received all the money due me, and have no mortgage on the land.

56 IGNOCENCIO ROMERO.

Sworn and subscribed to before me this 11th of Feb'y, 1857.

JNO. A. MONROE,
U. S. Comm'r.

Endorsed: Filed Feb'y 11th, 1857.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Answer.

In the district court of the United States for the northern district of California.

THE UNITED STATES
ads. } D. C. 304. L. C. 654.
INOC. ROMERO *et al.*

The United States, by their attorney, deny the validity of the title set out in the petition of the appellants, and pray that the decision of the U. S. land commission be affirmed, and that the said title be decreed invalid.

WM. BLANDING,
U. S. Att'y.

SAN FRANCISCO, *Feb'y* 12, 1857.

Endorsed: Filed Feb'y 12th, 1857.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

57 *Dep. of Geo. B. Tingley.*

United States district court, northern district of California.

San Francisco, *Feb'y 18th*, 1857.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came G. B. Tingley, a witness produced on behalf of the claimant in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 164 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: Counsel for claimant and Wm. Blanding, U. S. dist. attorney.

Questions by counsel for claimant.

What is your name, age, occupation, and place of residence?

Answer. My name is G. B. Tingley; aged 42 years; reside in San Francisco, and am an attorney-at-law.

Question. Do you know anything of the title papers of the Romero rancho, claimed by Inocentio Romero and others? and if so, please state your knowledge thereof.

Answer. I do. In 1850 there was a suit pending in the pueblo of San José, between Domingo Peralta Peff and Inocentio Romero
58 and Francisco Garcia, defendants, in the dist. court of said county, and on the trial of said suit there was exhibited and read as evidence on the part of defendants a grant in the Spanish language from Manuel Micheltorena to the three brothers Romero, (of whom Garcia afterwards purchased the interest of one,) for a tract of land, a sobrante, lying between Welsh, Lorenzo Pacheco, Peralta, and Joaquin Moraga, and Juan Sotos, ranchos. The petition was for the sobrante included therein, and the grant was for the sobrante, five leagues, more or less. The grant produced was on Spanish paper, and signed by Micheltorena on both sides, and was signed by Micheltorena as governor of California at that time; that the signature of Micheltorena was genuine as I believe from having seen his signature many times. The last I saw of the title papers they were in possession of a lawyer at San José by the name of Fred. H. Sanford. From my knowledge of the character and mode of business of Sanford, I think he was partly deranged, and no paper was safe in his hands – he went home to Georgia and died—nor was any paper safe in his hands. He took my license to practice law, and swore he had never seen it. I have never seen or heard of said grant
59 since. I know I have not the papers, and I am certain Sanford had them at the conclusion of the trial.

The reason why Inocentio Romero testified to my having the papers was because I and said Sanford sent a native California, and I think negro, Garcia, to Romero to get the title papers, and one of the witnesses on the trial swore that one of the parties was sick at the time; I think it was Inocentio Romero. Sanford left the winter or spring following and never returned. I had repeated occasions to search for his business papers, and have never been able to find them.

Cross-examined.

State what papers were produced on the trial.

Answer. The petition for the sobrante, signed by the brothers Romero. Connected with the petition was a marginal endorsement signed by Micheltorena, "Let the information be given." There was an information, signed by Antonio Maria Pico; then followed the concession; then was their title in form with a seal; at the bottom of the title was a condition that the grant should not interfere with the adjoining grants or the valid rights of adjoining proprietors. I
don't recollect any papers relating to juridcial possession. I am
60 confident that Sanford took the papers at the conclusion of the
trial. The handwriting of Micheltorena was proved, I think, but am not certain; but I am certain they were admitted in evidence. I do not remember the date of the title paper.

GEO. B. TINGLEY.

Sworn to before me this 18th day Feb'y, 1857.

JNO. A. MONROE,
U. S. Commissioner.

Endorsed: Filed Febr'y 18, 1857.

W. H. CHEVERS, *Deputy.*

Dep. of José Romero, and stipulation to admit same.

District court of the United States for the northern district of California.

José Romero *et al.*
vs.
The United States.

Northern District of California, *San Francisco, ss:*

José Romero, being sworn, says that he is one of the claimants above named; that he and his two brothers, Innocentio and Mariano
Romero, petitioned for the land known as "Las Juntas;" that
61 his brother, Innocentio Romero, moved upon the land in the
year 1843, at the time of petitioning for the same, and that said Innocentio attended to all the proceedings for obtaining a grant of the same, and had the custody of all the papers connected with the title thereof; that this deponent and his brother Mariano did not live upon said ranch, and did not have any custody of the title papers therein; that his brother Mariano now lives in Monterey, in this State; that he has none of the title papers in said cause, and does not know where they are, unless in the possession of his brother Innocencio; that said ranch has been known as the Romero ranch since the same was petitioned for in 1843; that their title to the same never was disputed, except by squatters; that this deponent sold a portion of his interest in said ranch to one Garcia, before the Americans arrived in this country, but that the deed therefor was not made until the year 1846-'47 or 1848; and further says not.

[SEAL.]

his
JOSÉ + ROMERO.
mark.

Sworn to and subscribed before me this 13th day of December, A. D. 1856.

OREIN BAILEY,
Notary Public.

62 I hereby stipulate that the within affidavit may be used the same as if taken before a commissioner by this court.

WM. BLANDING, *Dist. Att'y.*

FEB'Y 21*st*, 1857.

Endorsed: Filed Febr'y 21st, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Dep. of C. Brown.

UNITED STATES DISTRICT COURT,
Northern District of California:

THE UNITED STATES
vs.
INOCENCIO ROMERO *et al.*

SAN FRANCISCO, *February* 21, 1857.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Charles Brown and James M. Tice, witnesses produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 654 on the docket of the said board of commissioners, and was duly sworn,
63 and testified as follows, their evidence being given in English:

Present: E. A. Lawrence, for claimant; Blanding, dist. att'y, for U. S.

Questions by claimant's att'y.

What is your name, place of residence, and age?

Ans. Charles Brown; I reside at the Mission Dolores; my age is 42 years.

Quest. Are you acquainted with the Romero rancho. How long have you known it? and state what you know in regard of it.

Ans. I am, and have known it 17 or 18 years. It has always been known and recognized by the neighbors as the Romero ranch; I have never heard of any one disputing the title of the Romeros thereto; never saw the grant, but always understood that there was a grant to them of the rancho. One of the Romeros is a brother-in-law of mine, and on that account I was well acquainted with their business. I lived in San Antonio, about half-way from the town of San Antonio to the Romero ranch, during the years of 1838 and 1839, and was very frequently over the rancho from that time until the Americans came to this country.

Cross-examined.

64 Ans. The Romeros would have not been there till that time if they had not had a grant. The Romeros were living there before 1840, and had their cattle and a corral, and had a house there.

CHARLES BROWN.

Dep. of J. M. Tice.

Mr. James M. Tice, being duly sworn for the claimants, deposes and says:

Quest. What is your name, age, and place of residence?

Ans. My name is James M. Tice; age, 51 years; reside in Contra Costa co., on the ranch in question.

2nd quest. State what you know in regard of the title papers in said ranch.

Ans. When my son purchased the ranch, in February, 1855, the case had been submitted to the land commission and subsequently rejected for want of the title papers; since that time I have been engaged in looking after the title papers and hunting up testimony in said case. I have done it in behalf of my son and the other parties interested in said ranch. I have made diligent search for the papers, and been unable to find them; from the information
65 which I have been enable to obtain, said papers were last in
the hands of Mr. Sanford, who was the attorney for Romero and Garcia in a suit at San José, brought by Domingo Peralta against them; that said Sanford had the title papers at the conclusion of the trial, and refused to give them up on account of his fees not being paid by Romero.

I am satisfied from my examinations that Sanford took the title papers of said ranch to the Atlantic States, and since has died, and believe said papers to be lost.

Cross-examined by U. S. dist. attorney.

I never have examined the house that Romero now lives in; but Romero told me the same thing as he testified to in his deposition in this case.

J. M. TICE.

Sworn to before me this 21st day of Feb'ry, A. D. 1857.

JNO. A. MONROE,
U. S. Comm'r.

Endorsed: Filed Feb'ry 21st, 1857.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

66 *Dep. of José Jesus P. Mesa.*

United States district court, northern district of California.

José Romero *et als.*
vs.
United States.

San Francisco, *March 14th*, 1857.

On this day, before Jno. A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came José Jesus Policarpio Mesa, a witness produced on behalf of the claimant in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by Edgar Grymes, a sworn interpreter.

Present: U. S. dist. att'y, and E. A. Lawrence, for claimants.

Questions by counsel for claimants.

1st quest. What is your name, age, and occupation?

Answer. My name is José Jesus Policarpio Mesa; aged 57 years; and reside at the Rancho de las Juntas. I know Romero's
67 rancho. On the return of Romero from Monterey, in the year 1844, Romero was taken sick in bed at the pueblo of San José, at my house, and I saw the title papers of Romero in his hands. I asked him what the papers were, and he told me they were the title papers of his rancho. I did not read the papers; and I saw afterwards the order of the commandante, Micheltorena, to survey the land. I saw the signature of Micheltorena in the original title papers. I knew Micheltorena, and have seen him write, and the signature was genuine. The land was a sobrante between the lands of Bartolomo Pacheco, Juan Sanchez Pacheco, Welsh, and Moraga. I know this from the fact that I saw the order of survey. I know the boundary lines between the ranchos of Pachecos and Romero by a cross, but I was not present when it was made. Between the lines of Bartolomo Pacheco and Romero there is a cross on the tree.

Cross-examined.

I have been a witness before in this case. In 1845 I first knew of Romero having possession of the rancho with his family there, and a small house. Innocentio Romero was the one who came to see me when I was sick in San José; I can't tell the time, but I recollect the
68 year. I resided then in San José. Romero told me at the time the papers were title papers; they were served up in a bundle, and there were many of them. The bundle was not opened. Romero asked me to take charge of the papers, and I put them in my trunk. Romero was sick, and remained until he recovered, and then I gave him back the papers. The original papers were exhibited at the time of the sale from Romero to Garcia. Francisco Atoya was

reading the title at the time when I saw it. Atoya did not read the papers aloud. I did not hear the title read, and did not read it myself, but I know they were the title papers from what others said. I can't remember when this was, neither the month nor the year. I saw the signature of Micheltorena while Atoya was reading the title paper. Atoya, while he was reading, I saw the signature of Micheltorena. I saw the paper was all written on, but I read none of the papers, because I don't know how to read, but I know the signature of Micheltorena from seeing it on my own title papers. I can't write. I saw the stamp on the paper, and printing and writing; it was regular stamped paper. I was from a yard to a yard and a half from Atoya when he read the paper. Atoya was reading the paper,
69 because he had bought a part of the land before that time. I
saw the order of survey in 1844, I think. The survey of the sobrante was not made, but the survey of two adjoining ranchos was made. I saw the order of survey in the pueblo of San José. Antonio Maria *Pico* showed it to me and to Bartolomo Pacheco. Micheltorena signed the order of survey; I saw the signature. I have only testified in three cases.

Direct resumed.

I know grants when I see them, and I think this was in the usual form.

JOSÉ JESUS POLICARPIO $\overset{\text{his}}{\underset{\text{mark.}}{+}}$ MESA.

Sworn to and subscribed, March 14, 1857, before me.

JNO. A. MONROE,
U. S. Com'r.

Endorsed: Filed March 14th, 1857.

JNO. A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

Dep. of José R. Mesa.

United States district court, northern district of California.

SAN FRANCISCO, *March* 17, 1857.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came José Ramon Mesa, a witness
70 produced on behalf of the United States in case No. 304, being
an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654, on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by Robert Simson, a sworn interpreter. Present: The U. S. dist. att'y, and E. A. Lawrence, esq., of counsel for the complainants.

Questions by counsel for the United States.

1st. What is your name, age, and occupation?

Answer. My name is José Ramon Mesa; I am a ranchero, and live in Marin county, and am thirty-three years of age. I have lived in California ever since I was born. I know Domingo Peralta, Innocencio Romero, and Francisco Garcia.

Quest. Do you remember a suit between Domingo Peralta on the one hand, and Innocencio Romero and Francisco Garcia on the other, in the district court of San José, in 1850?

(Question objected to by claimants' attorney as being secondary evidence.)

71 Ans. I remember the said suit. I was present at the trial.
Quest. State if you remember what was the subject-matter of that suit.

(Question objected to by claimants' attorney as incompetent testimony, no foundation having been laid for the introduction of secondary evidence.)

Ans. It was about a piece of land which forms part of the rancho of San Ramon. There was no formal title presented in evidence by the Romeros in that cause. There was a provisional document. I mean by a provisional document, a document conceding to the parties a provisional license to occupy, subject to the boundaries of the neighboring proprietors; meanwhile, that the proceedings took place for the getting of the title,

Quest. Did you, on the trial, read or heard read the document you have mentioned, and in what language were the document made?

(Objected to by claimants' attorney. Objects to the witness stating anything that *that* he heard read.)

Ans. I heard the document read in the Spanish language in court.
Yes, I have heard Inocencio Romero speak of the said piece
72 of land since the Americans took possession of California. He
spoke in reference to his ranch or title. I heard Domingo Peralta, on one occasion, ask Innocencio Romero what title he had from the government for that piece of land. Romero said that he had no title from the Mexican government for that piece of land; that all he had was a provisional license. This conversation between Romero and Peralta took place after the suit in San José. I heard Innocecio Romero say that he wanted to sell that provisional land that he had, in order to be liberated from suits, so that another person might litigate about the land instead of him. This was before the sale of Innocencio Romero. I am in no way related either to Mr. Romero or Francisco Garcia. I have heard Garcia say that he had no title to the land in question. I heard Garcia at the same time say that he intended to take steps to get a title for that land. On several occasions I heard Garcia say that he had only a provisional license ("licencia provicional") for the said land, and that he was anxious to proceed with the steps necessary to obtain a title. His conversation took place after José Romero had sold his right in said land to Fran-
cisco Garcia, and it was before that Francisco Garcia had sold
73 to anybody else. (This examination was taken under objec-
tion of claimants.)

Cross-examination by claimants' attorney.

I do not remember when Garcia bought, but I remember when he sold. I cannot undertake to fix exactly the date when Garcia sold, but I think it was in 1852 or 1853. As it was not a matter that concerned me, I cannot fix the date exactly. These conversations took place three or four months before the sale by Garcia. There were squatters on said ranch about this time, and there were difficulties with them. I do not know how to read or write. When I had the conversation that I have mentioned with Francisco Garcia he and I were alone together. That one of the conversations to which I refer took place in my presence between Garcia and Romero, and the conversations to which I refer are those about which I have already testified.

Imean by a final grant, one which runs in the name of the government, for instance, of General Micheltorena. I do not recollect in the name of what governor this "*licencia provicional*" ran, but I think that it was in favor of Innocencio Romero. I am ignorant in regard of matters of law; all that I know about this document is what I
74 heard read in court. I mean as to the form of the document.
I have not read a final document of title, but I have heard them read. I know, of my own knowledge, what a formal title is; it is a concession from a president or superior officer, signed and issued by him to any body whatsoever named in the concession. The reason I know this is, that with the amount of talent that God has given me I have been enabled to know it. I have learned this from having heard instructed persons read it and by my natural ability. I have adopted it. The lawsuit in San José, of which I have testified, between Peralta, Romero and Garcia, took place in the year 1850. I was not in court all the time of the trial at San José, but I was some of the time. I cannot tell how long a time the proceeding in court lasted. I only know of one day's proceeding in the court of San José. Domingo Peralta gained the said suit in San José. I do not know whether the case was appealed to the Supreme Court.

his
JOSÉ RAMON X MESA.
mark.

Sworn to before me this 17th of March, 1857.

JNO. A. MONROE,
U. S. Com'r.

Endorsed: Filed March 17, 1857.

JNO. A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Opinion and judgment of the supreme court of California.

75 DOMINGO PERALTA, respondent,
vs.
INOCENCIO ROMERO and FRANCSICO GARCIA, appellants.

And now, at this day, this cause having been submitted upon the record and briefs, and taken under advisement by the court, being called, and all and singular the law and the premises being by the court here seen, heard, and fully understood and considered, the opinion of the court is delivered by Mr. Justice Bennett to the effect that the judgment of the court below be reversed. Whereupon it is ordered, adjudged, and decreed by the court here that the judgment of the district court of the third judicial district, in and for the county of Santa Clara, in the above entitled cause, be, and the same hereby is, reversed, in conformity with the opinion of this court herewith remitted.

I, Charles S. Fairfax, clerk of the supreme court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 25th day of July, A. D. 1851, and now remaining of record in my
76 office.

Witness my hand and the seal of the court affixed, at office,
[SEAL.] this 16th day of March, A. D. 1857.

CHAS. S. FAIRFAX, *Clerk.*
By DAV. T. DAYLEY, *D. Cl'k.*

Opinion of the court by Mr. Justice Bennett.

DOMINGO PERALTA,
vs.
INNOCENCIO ROMERO and FRANCISCO GARCIA.

This action was brought to recover the possession of a tract of land in the valley of San José. It was instituted in the court of first instance for the district of San José previous to the adoption of the common law, and the proceeding is one which is denominated in the civil law a *possessory action.* Such an action does not involve an inquiry into the validity of the title of either party, nor does it require the court to determine whether the title of the plaintiff be such as would enable him to recover in an action of ejectment at common law. The proof shows that the defendants had been in the undisturbed possession of the land in dispute for more than a year and a
77 day previous to the institution of the suit, and the Spanish and
Mexican authorities are explicit that a possessory action cannot be maintained in such a case.—(See Suñol *vs.* Hepburn, and authorities there cited.)

The court was asked to instruct the jury to that effect, but refused, and the defendants excepted. For this incorrect decision the judgment must be reversed. There are many other reasons why I do not feel disposed to pass definitely upon the rights of the parties. The land claimed is a large tract, and of great value. There is no answer to the complaint upon the merits; but an answer was put in by way of exception, being in the nature of a common law demurrer, and upon the complaint and this demurrer the parties went to trial, adduced evidence, and submitted their cause to a jury.

The evidence returned is so meagre and insufficient that it is impossible for me to say which party has the title to the land in controversy, or whether the land now in the possession of the defendants is the same tract which is claimed by the plaintiff, or is that which was

granted by Governor Figueroa to Pacheco and Castro. In addition to this, the court has not had the benefit of an argument at bar, the cause having been submitted on the record; and the points of the defendants and the counsel for the plaintiff having failed to fur-
78 nish the court with any points or briefs, I do not feel disposed, in this way, to decide finally upon the important interests of parties. The land described in the complaint appears to have been granted by Governor Figueroa to Bartolo Pacheco and Mariano Castro. The latter conveyed his interest to the plaintiff Peralta. Pacheco died without having parted with his interest, and consequently the plaintiff and the heirs of Pacheco have a joint interest in the whole property. No reason is given in the complaint why the heirs of Pacheco are not joined as co-plaintiffs, and the objection, on the ground of non-joinder, was taken in the court below. I do not see how the plaintiff can recover without joining the persons who have with himself a common interest in the land. The plaintiff alone does not appear, from his own showing, to be entitled to the possession; but if he has any claim at all, it is a joint claim with the heirs or assigns of Pacheco. I think the best course to be pursued is, to reverse the judgment without prejudice to the right of the parties in the subject-matter of controversy, and leave them to present their cause of action and their defence in a legal and definite shape under the present system of procedure.

Ordered accordingly.

(Signed) BENNETT, J.

79 I, Charles S. Fairfax, clerk of the supreme court of the State of California, do hereby certify that the foregoing is a true copy of the original opinion, delivered in the above entitled cause on the 25th day of July, A. D. 1851, and now remaining of record in my office.

[SEAL.] Witness my hand and seal of the court, affixed at office, this 16th day of March, A. D. 1857.

CHAS. S. FAIRFAX, *Clerk*,
By DAV. T. DAGLEY.

Endorsed: Filed March 23, 1857.

W. H. CHEVERS, *Deputy*.

81 STATE OF CALIFORNIA,
County of Santa Clara:

Be it remembered that at the district court of Santa Clara county, begun and held before the Hon. John H. Watson, judge, in the city of San José, on the 4th Monday in April, A. D. 1850, among other causes then and there heard was the following, to wit:

Transcript from Sup. Ct. of Cal'a, offered by the U. S.

DOMINGO PERALTA
vs.
INNOCENCIA ROMERO AND FRANCISCO GARCIA. } Possession and damages.

UPPER CALIFORNIA,
District of San José:

To the honorable court of the first instance for said district·

The petition of Domingo Peralta, complaining, respectfully showeth
that José Figueroa, brigade general of the Mexican army, inspector
general and superior political chief of the Territory of California, did,
on the tenth day of June, in the year of our Lord eighteen hundred
and thirty-three, give, grant, and convey to one Bartolo Pacheco and
Mariano Castro a certain quantity, tract, or parcel of land, now in
said district of San José, bounded on the north by a tract of land
called El Ambré, on the south by the rancho of José Maria Amador,
to the east by the rancho of San Antonio, on the west by a
82 tract of land called Monte del Diablo, containing two leagues,
more or less, and unknown, the grant to which premises made
by the said José Figueroa, and the plat of said land, are here in court,
ready to be shown; and the said Mariano Castro afterwards, to wit,
in the month of July, 1843, did sell all of his interest, the same being
one-half, to the Peralta, your petitioner, who immediately went into
the possession and occupancy of the same; and your petitioner avers
that while he, the said Peralto, and the said Pacheco, who is now
dead, were in the actual, lawful, and quiet possession of the said premises
as before described; that one Innocencia Romero and Francisco
Garcia, of said district, did, in January, eighteen hundred and forty-four,
without any authority, color of title, or claim whatsoever, enter
and trespass upon the land aforesaid, contrary to law and the known
and repeated notice of your petitioner, and that said Innocencio Romero
and Francisco Garcia are now in the unlawful possession of said
land; and your petitioner avers that said land is of great value, to
wit: of the value of fifteen thousand dollars, and that by the entering
upon and using of the said land by the said Romero and Francisco
Garcia for a long space of time your petitioner has sustained damages
of them in the sum of twenty thousand dollars; wherefore your
83 petitioner prays that process or summons may issue to said
Romero and Francisco Garcia, requiring them to be and appear
before the court of the first instance to answer petitioner's complaint,
and to try the right of possession of said land, and to stand to and
abide by such decree as may be had on trial of the right of the possession
of said premises, as well as to answer your petitioner for the damages
he has sustained by the illegal possession of said defendants; and
your petitioner will ever pray, &c.

FRED. H. SANFORD,
Compl'ts' Attorney.

STATE OF CALIFORNIA,
District of San José:

The people of the State of California to Innocencia Romero and Francisco Garcia:

You are hereby cited to be and appear at the court-house in the Pueblo of San José within nine days after service of this writ, to answer the petition of Domingo Peralta for the right of possession of lands and damages in the sum of twenty thousand dollars. Given under my hand this 8th day of March, 1850.

H. C. MELONE,
Clerk of Court of First Instance.

84 Served by reading to Francisco Garcia, and by copy on Innocencia Romero, March 9th, 1850.

J. F. SROWE,
Sheriff.

DOMINGO PERALTA
vs.
INNOCENCIA ROMERO AND FRANCISCO GARCIA. } Exception 16.—March, 1850.

Now at this day comes the aforesaid parties by their respective attorneys; defendants filed exceptions to plaintiff's petition, which, by agreement of the parties, were taken up and the court sustained them; thereupon plaintiff was allowed to amend his petition.

UPPER CALIFORNIA,
District of San José:

In the honorable court of the first instance for said district:

DOMINGO PERALTA
vs.
INNOCENCIO ROMERO AND FRANCISCO GARCIA. } Petition for possession of land and damages, &c.

Now comes said respondents, and for answer (by way of exception) to plaintiff's petition, herein say the same is not sufficient in
85 law to enable petitioner to maintain his petition in this, to wit:
said petitioner shows that the land described in his petition was granted to Bartolo Pacheco and Mariano Castro, as joint tenants, in the year 1853; that in July, 1843, said petitioner purchased one-half of said tract of land, being Mariano Castro's interest therein, and immediately entered into the possession of the same, (one-half,) as tenant, in common with Bartolo Pacheco. Petitioner then avers that while himself and Pacheco, who is now dead, were in the actual, lawful, and quiet possession of the premises described, said defendants, without color of title or right to said land, entered thereon as trespassers, &c.

Petitioner then claims possession of *all* the land and damages for trespass and detention of all said trac.

But petitioner does not show that any partition of said land was ever had between himself and Pacheco, or any one holding under Pacheco, by descent or purchase, or that petitioner has anyright, title, or claim to Pacheco's interest in said land, nor does petitioner allege or show any claim or right whatsoever, by deed, grant, or descent, to the whole of said tract of land ; nor does he show when he was in quiet possession, or when defendants entered thereon ; nor does he show that defendant entered or trespassed on any definite share or part of said tract of land, by metes or bounds, to which he has any right or title, 86 but admits that the amount and limits of said land are unknown ; nor does he allege or show that Pacheco has no heirs or legal representatives now living or in possession of Pacheco's interests in said land ; nor does he show the date of defendants' entry on said land, or how long they have been possessed thereof ; and they further aver that said petition is otherwise vague, uncertain, and wholly insufficient in law to afford petitioner any redress ; wherefore, for the reasons aforesaid, defendants except to the sufficiency of plaintiff's petition, and pray the judgment of this hon. court whether they shall be required to further answer the same, and pray to be hence discharged with their costs.

GEO. B. TINGLEY.
Att'y for Def'ts.

DOMINGO PERALTA
vs.
INOCENCIA ROMERO &
FRANCISCO GARCIA.
} Complaint in court of first instance.

It is agreed that said cause be set down for trial on Thursday next, the 20th inst., and that all exceptions not taken or waived to the declaration before trial shall not be taken on the appeal.

TINGLEY,
Att'y for Defendants.
87 FRED. H. SANFORD,
Plaintiff's Att'y.

DOMINGO PERALTA
vs.
INOCENCIA ROMERO &
FRANCISCO GARCIA.
} Possession and damages, May 13, 1850.

In this cause comes the parties, by their attorneys, and issue being joined, thereupon a jury was summoned from the bystanders, to wit: Edward Jones, Samuel C. Young, Henry S. Trigler, David Barnes, William S. King, John Tigh, Zeri Hamilton, H. S. Skinner, S. O. Haughton, John H. Garrison, Wm. H. Christian, and Michael Marshall, who were duly sworn to try the issue joined. Edward Jones, being sick, was excused by agreement of the parties. The evidence not being closed, the jury were permitted to disperse, under charge of the court, until to-morrow at 10 o'ck.

Domingo Peralta
vs.
Innocencio Romero &
Francisco Garcia.
} Possession and damages, May 14, 1850.

In this cause comes the parties, by their attorneys, and the aforesaid jury, to wit: Samuel C. Young, Henry S. Trigler, David
88 Barnes, William S. King, John Tigh, Zeri Hamilton, H. C.
Skinner, S. O. Haughton, John H. Garrison, Wm. H. Christian, and Michael Marshall, and the following persons were sworn in behalf of plaintiff, to wit: Mariano Castro, John Soto, C. Hernandez, —— Garcia and Juan Espacia; and the following for defendants, to wit: Charles White, Antonio Ma. Pico and K. R. Dimmick; the evidence being closed, the jury, upon their oath, returned into court the following verdict, to wit:

The jury find a verdict for plaintiff in regard to the right of possession, and find damages for plaintiff in the amount of sixty dollars and costs.

DAVID BARNES,
Foreman.

Wherefore, it is considered, adjudged, and decreed by the court that the plaintiff do recover the property described in his petition, and that a writ of *habere facias possessionem* be issued, commanding the sheriff to put him in possession of the said premises; and it is considered, adjudged, and decreed by the court that the said plaintiff do recover of the defendants the damages assessed, to wit: the sum of sixty dollars and all costs in said cause expended, which said verdict was rendered at San José, in the county of Santa Clara, on this 14th day of May, A. D. 1850.

89 Domingo Peralta
vs.
Innocencia Romero & Francisco Garcia.
} May 13th, 1850.

Mariano Castro, sworn on the part of plaintiff, says he has no interest in the event of this suit. Knows the land in dispute. The act companying plat presented to witness the defendants' counsel objects. This is a copy of the original plat in Monterey. Defendants' counsel excepts to the introduction of the plat—overruled the objection. The court permitted the plat to go to the jury. He (witness) turned over the possession of the place some five or six years ago to the plaintiff. Domingo Peralta took possession about four years ago, say in 1846. No person lived on the land in dispute in 1846, when Peralta took possession. Defendants are now living upon the land in dispute, and entered on after plaintiff. Defendant did not remain on premises with consent of plaintiff, and they have often endeavored to get them off. Defendants instituted suit against plaintiff in Contra Costa county, before the alcalde, about two years ago, and plaintiff instituted suit against defendants for same, about same time, before same alcalde. That there has been difficulties and suits about possession continually since defendants levied on the land. That

90 he sold to plaintiff; values the land at $10,000; would not take, per year, $200 if he was owner.

Crossed.

Witness states that def'ts have lived more than two years on the land now in dispute. He went with Peralto to the alcalde, and asked, why do you allow the def'ts to stay on the land, which he, witness sold to Peralta. Domingo Peralta had a small house and commenced to build a large house. He was dispossessed by an order from Alcalde Brown, from Contra Costa. Peralta being first on the ground, difficulties arose on entrance of defendants, and have continued to the present time. Suit was brought before Burton, alcalde, about three years since, at the time witness went before Alcalde Brown, of Contra Costa; that he had no interest in the land; was not responsible if lost, nor would he gain if it was gained.

Juan Soto sworn: Witness states that he knows the land in dispute; does not remember the time or year. Domingo Peralta was first in possession of the land in dispute. Def'ts after took possession, and dispossessed by order of Alcalde Brown. Defendants have been in possession two years, more or less. Peralto lived with his family on the land in dispute, and tilled the earth.

Cornelius Hernandez sworn.

91 Garcia (brother of the def't) sworn: Knows the land in dispute. Domingo Peralta went on the land in the year 1847. Peralto was first on the land in dispute. Defendants went on the land in dispute. Defendants went on the land four or five months after plaintiff; that plaintiff has attempted legally and otherwise to oust the defendants from the time of their entrance to the present time. Thinks the rent of the land worth $200.

Crossed.

Says defendants have been in possession; had their cattle, and cultivated the ground.

Juan Espacia sworn: Says he had no interest in the event of this suit. Knows the land in dispute. The use of land is worth about $2,000 per year.

Crossed.

Has seen the land in dispute.

Charles White sworn: Says he has no interest in the event of this suit. Is acquainted with the handwriting of Burton. Burton was alcalde in 1847. He acted as recorder and secretary for Burton, and, as such, recorded all acts required. Burton exercised the jurisdiction of first alcalde since 1846. Peralto sued. Defendants were in possession of land, and he has therefore been continually trying to get them off.

92 Antonio M. Pico sworn: Says he has no interest in this suit. Witness knows the land in dispute. Witness states that the governor gave him orders to give Mariana Castro possession of the

land in 1844, and the remainder of the land was to go to the Romeros. He therefore called together the parties and advised a survey, which was not agreed upon ; and he (witness) then advised the Romeros to go and take possession of a remote part of the land, so as not to conflict with Mariano Castro ; that at the time of this he was alcalde of San José. Witness believes that he was commanded to give about two leagues, more or less, to Mariano Castro. The southern line of the rancho is a little more south of the house, as laid down on the plat, marked (A.) Witness has been through the land in dispute several times. Witness states that Peralta has about the same land that Mariano Castro formerly had. States that from the cultivated ground on the south, to the cultivated ground of defendants is about 2,000 varas, or about one mile.

K. H. Diminick sworn : Says he was first alcalde in the district of San José on the 1st of March, 1849, and continued until August, 1849. He was instructed by Governor Mason to act as judge
98 of first instance, in district of San José, during the time he was alcalde. Witness during this term ordered a survey, appointed Augustus Juan, surveyor. He thinks survey marked (C) is the one returned by said surveyor. Witness recollects the order marked (D,) as the basis of his ordering the survey. That one party contended that there was two leagues, and the other contended that there was more, which dispute led to the survey.

The above is all the testimony taken in the above case.

H. C. MELONE, *Clerk.*

MAY 13, 1850.

DOMINGO PERALTA
vs.
INNOCENCIA ROMERO AND FRANCISCO GARCIA.

In this cause comes the plaintiff and paid the jury one hundred and ten dollars for two days' jury fees.

DOMINGO PERALTA
vs.
INOCENCIA ROMERO AND FRANCISCO GARCIA.

In this cause comes the defendants, by attorney, gave notice
94 of appeal, and tendered his bill of exceptions, which are signed, sealed, and made a part of the records.

Defendants ask the court to give the following charges :

1st. That if the jury find, from the evidence, that defendants, or either of them, have been in possession of the land in controversy since 1844, the jury must find for the defendants.

2nd. If they find from the testimony that deft's were in the possession of the land in controversy since 1844 or 1847, and have never been dispossessed by due course of law, possessory action is barred by prescription, and they should find for the defendants.

3rd. That to maintain a possessory action the party must have actual possession of the land in controversy.

4th. That if the jury find from the evidence that defendants caused plaintiff to be ousted from the land in 1847, and have remained in possession of the same up to this day, whether that ouster was legal or illegal, the plaintiff possessory action was barred or prescribed at the time of the commencing this suit, and the jury for find for 95 defendants.

5th. If either of defendants were in possession of said land, by going on the same in person, or by building thereon in 1844 or 1845,–'6 or 1847, it is prior possession of defendants, and the jury shall find accordingly.

Stricken out by going on in person. Stricken out '44,–'45,–'46,–'47; and I add the *the* person first building, or doing other acts of ownership, is entitled to a verdict.

6th. That the jury must find from the evidence that plaintiff is entitled to some given metes and bounds to which he is entitled to possession; and if the jury find that the testimony does not establish any right of possession by metes and bounds that clearly identify the possession sought to be recovered, the jury should find for defendants; *i. e.*, the evidence must embrace the land in dispute.

7th. That if the jury find from the evidence that defendants have been in full and undisturbed possession of the lands in controversy more than one year and one day before the commencement of this suit, the plaintiff's action is prescribed, and the jury should find for the defendants, given with the insertion "undisturbed."

96 8th. Defendants ask the court to charge the jury that if defendants have been in full possession of the lands in controversy since 1844 to 1850, or from 1847 to March 7, 1850, that plaintiff's possessory action is prescribed, tho' during that time the parties quarrelled personally about the possession, and plaintiff instituted suits to recover the possession of the property both before competent and incompetent courts, provided plaintiff failed to prosecute said suits to effect, or dismissed the same, or the same were decided against him.

PERALTA
vs. } Possessory action.—May, 1850.
GARCIA ROMERO.

Now comes the defendants in open court, in presence of plaintiff, and given notice that he will appeal said case to the Supreme Court, in conformity to the provisions of the statutes of the State of California regulating appeals to the Supreme Court, and the practice of said district and Supreme Courts adopted by the legislature in 1850.

INNOCENCIA ROMERO,
FRANCISCO GARCIA,
Defendants.

97 Service acknowledged.

FRED. H. SANFORD,
Pl'ff's Attorney.

PERALTO
vs.
GARCIA & ROMERO. } Petition for possession.

Be it remembered that on this 14th day of May, 1850, the above cause having been submitted to a jury, and after all the evidence being heard on the part of plaintiff and defendants, thereupon defendants moved the court to instruct the jury as follows: (see instructions.) The 1, 2, 3, 4, and eight charges the court refused to give the jury, and gave the 5, 6, and 7 in the following form: (see instructions.) To the refusing of the court to give said charges as asked for, and giving said charges as modified, defendants objected, and except and pray that this their bill of exceptions may be signed and made a part of the record in this case, which is done.

JNO. H. WATSON.

El Exmo. Sor. Gobernador ha dispuesto que se proceda á la medicion del terreno sobrante que solicitan los Señores Romeros, y que si fuere necesario medir los ranchos inmediatos que tam tambien se ejecute la espresada medicion en la inteligencia que los que salgan agraciados seran los que satisfagan el corte pendente de los gastos. 98

Y en cumplimiento de la superior orden le digo á V. para su conocimiento y ejecucion.

Dios y Libertad, Monterey, Marzo 23, de 1844.

Manuel Jimeno, secretario del despacho. Sor. Alcalde 1°. del Pueblo de San José.

Sea de acuerdo que en el dia 9 de Abril de 1847, ordeno á los interesados de tomar posesion de los terrenos mencionados segun el orden del gobierno, y á mas ordeno que en caso que se esponga algun colindante que se mand la medicion de sus terrenos.

(Firmado) JOHN BURTON, *J. P.*

I do hereby certify that the above is a true copy of the original found in this office. In witness whereof, I have hereunto set my hand and seal this 9th day of April, A. D. 1847.

(Signed) JOHN BURTON, *Magistrate.*

Paso este documento al Señor D. José Miguel Garcia y para que conste lo firmo San José, 9 de Mayo, de 1849.

(Firmado) JO É ROMERO.

99 Dijeron que por su parte se lor podia conceder á los Sñes. Romeros el sobrante del terreno que no los pertenesca.

Pueblo de San José de Guadalupe, 29 de Mayo de 1847.

(Firmado) ANTO. MA. PICO.

Tomado ante de mi Juez de Paz.

(Firmado) JOHN BURTON.

Oficina de Pueblo de San José, 28 *de Mayo de* 1847.

Procedo al interesado conforme el orden del supremo gobierno; y si algunos de los colindantes hara sus baraso, que se manda la medicion de sus terrenos segun lo mandado del gobierno, y en que caso no quierren cumplir siga ll. con su trabajo.

(Firmado) JOHN BURTON, *J. P.*

En la cuestion suscitada entre Domingo Peralta y los Sres. Romero y Garcia Estos no tienen mas que hacer que renunciar el beneficio de la conclusion llegar al juez de 1ª instancia y alegar que entrea las medidas *exactas* del terreno de Peralta conforme á ordenanza para que sean señalados los dos sitios que pide su titulo, en caso de unfallo en contra de los Romeros deben apelar al supremo tribunal. Si proceden á la medicion del terreno debe verificarse por un agrimensor *autorizado* y no deben de perrmitir que sea por solo el llano sino sobre
100 lomas y cañadas conforme á ordenanza.

Sor. Alcalde Constitucional:

El que suscribe esta surmisa representacion tiene el honor de rrecurir á V. fundado en el derecho de peticion que á todo ciudadano le concede la ley, y asi como el Exmo. Sor. Gobernador de este departamento recomienda en sus proclamas que se atienda con justicia á todo ciudadano en sus peticiones y reclamos desde el año cuarenta y cuatro se paso una orden del gobierno anterior á este juzgado para que se hiciesen los medidas del terreno llamado las juntas que pedimos en compañia yo y mi hermano Inocencio Romero compre la sitacion de los colindantes lo que hasta la presente no se ha verificado los que suplicamos á V. se sirva como primer magistrado de este juzgado se haya una informacion ó se nos de un testimonio por el alcalde que fue en el año cuarenta y cuatro de los informes que se pasaron el gobierno que se nos podrá agraciar con dichas tierras.

P. T. Suplicamos se sirva proveer con piedad á favor del que reclama V. Pueblo de San José de Guadalupe, 28 de Mayo de 1847.

(Firmado,) JOSE ROMERO.

101 Habiendo sido llamado el Sor. Don Anto. Ma. Pico el persona que era alcalde en el año de 1844, y habiendo sido preguntado sobre la materia de los Sres. Romeros tocante á la colindantes se pudeira sentar en dicho sitio pretendido llamado los juntos el Sor. Du. Joaquin Moraga y el Sor. D. Lorenzo Pacheco.

Presentado y admitido que se pasen lo mas pronto posible á cumplir con el orden del superior gobierno para su devido cumplimiento.

Oficina del magistrado del Pueblo de San José, 5 de Abril de 1857.

(Firmado) JOHN BURTON, *J. P.*

Sor. Juez de Paz del Pueblo de San José de Guadalupe:

José Romero ante V. con el mayor respeti diciendo que hace algunos años que tenga solicitado un pedazo de terreno en el cañada de San Ramon y colinda con los terrenos que pertenece al sor. Don Mariano Castro tomando el sobrante de lo que espresa el titulo del sor. Castro

(que son dos leguas) y entonces colindando con los terrenos del difunto vil por el norte.

Sor. Juez el Ex'mo Sor. Governador mando que se midiese los terrenos del Sor. Castro y que si nos dasa posesion del sobrante pero nunca se ha cumplido por no haber lugar los papeles dever estar en
102 el juzgado de ese pueblo que consta del presente orden.

Sor. juez humildernente esponga á V. que somos dos hermanos y con gran numero de familia teniendo algunos bienes del campo y sin tener un pedago de terreno para criarlos por lo cual suplicamos á V. de ver por los interesados lo mas pronto que se picede para que podemos ir a fincar, y meter nuestros bienes.

Rendidamente suplico de prover como llevo pedido que es gracia que espero de ll. sus manores subditos.

su
JOSÉ ROMERO, +
cruz.

su
INOCENCIA ROMERO, +
cruz.

PUEBLO DE SAN JOSÉ, 31 *de Marzo de* 1847.

To the honorable 1*st of the Pueblo de San José, P. G:*

As expressed in your decree of the 1st of March, I proceeded to the lands referred to, and known by the name parage conocido con el nombre de San Ramon, and going over a certain tract of land in a northerly direction, after measuring ten thousand varas (two leagues) in direct line, I made with an axe a mark on a tree which stands on the edge of a stream; my esteem is that there is about two thousand varas
103 between that point and the rancho of Francisco Garcia; and that with evidence Bartolo Pacheco, or assigns, have no right but to two leagues mentioned, and even I consider as very doubtful that the title of said Pacheco covers such a tract as he pretends. It would be allowing that their two leagues granted are to be measured lengthway, one league after the other, following the valley, leaving on each side vacant lands, though the grant does not mention such a special way of measuring the two leagues. The weather and other circumstances did not allow me to make further survey; but, anyhow, my opinion is, that Pacheco, or assigns, pretensions on these lands are exaggerated and out of justice.

San José Gp., Mar. 29, 1849.

A. JONAN.

(Here follows map marked original, page 104.)

105 *Jusgado del Pueblo de San José:*

Whereas, by this order of Micheltorena, then governor of California, a survey was ordered of the rancho of the Romeros and adjoining ranchos; and whereas said survey having been made by Augustus Juan, esq., by the appointment of the alcalde, in compliance of said order, therefore be it ordered that the said survey be respected by all parties, and be the said boundaries until altered or changed by competent authority.

R. H. DIMMICK, 1*st Alcalde.*

OFICINA DE PUEBLO DE SAN JOSÉ, 28 *de Mayo de* 1847.

Procedo al interesado conforme el orden del supremo gobierno; y si algunos de los colindantes hara sus baraso, que se manda la medicion de sus terrenos segun lo mandado del gobierno, y en que caso no quierren cumplir siga ll. con su trabajo.

(Firmado) JOHN BURTON, *J. P.*

En la cuestion suscitada entre Domingo Peralta y los Sres. Romero y Garcia Estos no tienen mas que hacer que renunciar el beneficio de la conclusion llegar al juez de 1ª instancia y alegar que entrea las medidas *exactas* del terreno de Peralta conforme á ordenanza para que sean señalados los dos sitios que pide su titulo, en caso de unfallo en contra de los Romeros deben apelar al supremo tribunal. Si proceden á la medicion del terreno debe verificarse por un agrimensor *autorizado* y no deben de perrmitir que sea por solo el llano sino sobre
100 lomas y cañadas conforme á ordenanza.

Sor. Alcalde Constitucional:

El que suscribe esta surmisa representacion tiene el honor de rrecurir á V. fundado en el derecho de peticion que á todo ciudadano le concede la ley, y asi como el Exmo. Sor. Gobernador de este departamento recomienda en sus proclamas que se atienda con justicia á todo ciudadano en sus peticiones y reclamos desde el año cuarenta y cuatro se paso una orden del gobierno anterior á este juzgado para que se hiciesen los medidas del terreno llamado las juntas que pedimos en compañia yo y mi hermano Inocencio Romero compre la sitacion de los colindantes lo que hasta la presente no se ha verificado los que suplicamos á V. se sirva como primer magistrado de este juzgado se haya una informacion ó se nos de un testimonio por el alcalde que fue en el año cuarenta y cuatro de los informes que se pasaron el gobierno que se nos podrá agraciar con dichas tierras.

P. T. Suplicamos se sirva proveer con piedad á favor del que reclama V. Pueblo de San José de Guadalupe, 28 de Mayo de 1847.

(Firmado,) JOSE ROMERO.

101 Habiendo sido llamado el Sor. Don Anto. Ma. Pico el persona que era alcalde en el año de 1844, y habiendo sido preguntado sobre la materia de los Sres. Romeros tocante á la colindantes se pudeira sentar en dicho sitio pretendido llamado los juntos el Sor. Du. Joaquin Moraga y el Sor. D. Lorenzo Pacheco.

Presentado y admitido que se pasen lo mas pronto posible á cumplir con el orden del superior gobierno para su devido cumplimiento.

Oficina del magistrado del Pueblo de San José, 5 de Abril de 1857.

(Firmado) JOHN BURTON, *J. P.*

Sor. Juez de Paz del Pueblo de San José de Guadalupe :

José Romero ante V. con el mayor respeti diciendo que hace algunos años que tenga solicitado un pedazo de terreno en el cañada de San Ramon y colinda con los terrenos que pertenece al sor. Don Mariano Castro tomando el sobrante de lo que espresa el titulo del sor. Castro (que son dos leguas) y entonces colindando con los terrenos del difunto vil por el norte.

Sor. Juez el Ex'mo Sor. Governador mando que se midiese los terrenos del Sor. Castro y que si nos dasa posesion del sobrante pero nunca se ha cumplido por no haber lugar los papeles dever estar en
102 el juzgado de ese pueblo que consta del presente orden.

Sor. juez humildernente esponga á V. que somos dos hermanos y con gran numero de familia teniendo algunos bienes del campo y sin tener un pedago de terreno para criarlos por lo cual suplicamos á V. de ver por los interesados lo mas pronto que se picede para que podemos ir a fincar, y meter nuestros bienes.

Rendidamente suplico de prover como llevo pedido que es gracia que espero de ll. sus manores subditos.

su
JOSÉ ROMERO, +
cruz.

su
INOCENCIA ROMERO, +
cruz.

PUEBLO DE SAN JOSÉ, 31 *de Marzo de* 1847.

To the honorable 1*st of the Pueblo de San José, P. G:*

As expressed in your decree of the 1st of March, I proceeded to the lands referred to, and known by the name parage conocido con el nombre de San Ramon, and going over a certain tract of land in a northerly direction, after measuring ten thousand varas (two leagues) in direct line, I made with an axe a mark on a tree which stands on the edge of a stream; my esteem is that there is about two thousand varas
103 between that point and the rancho of Francisco Garcia; and that with evidence Bartolo Pacheco, or assigns, have no right but to two leagues mentioned, and even I consider as very doubtful that the title of said Pacheco covers such a tract as he pretends. It would be allowing that their two leagues granted are to be measured lengthway, one league after the other, following the valley, leaving on each side vacant lands, though the grant does not mention such a special way of measuring the two leagues. The weather and other circumstances did not allow me to make further survey; but, anyhow, my opinion is, that Pacheco, or assigns, pretensions on these lands are exaggerated and out of justice.

San José Gp., Mar. 29, 1849.

A. JONAN.

(Here follows map marked original, page 104.)

105 *Jusgado del Pueblo de San José:*

Whereas, by this order of Micheltorena, then governor of California, a survey was ordered of the rancho of the Romeros and adjoining ranchos; and whereas said survey having been made by Augustus Juan, esq., by the appointment of the alcalde, in compliance of said order, therefore be it ordered that the said survey be respected by all parties, and be the said boundaries until altered or changed by competent authority.

R. H. DIMMICK, 1*st Alcalde.*

Petition for possession.

PERALTO
vs.
GARCIA & ROMERO.

Now comes the defendants and moves the court to arrest the judgment, to set aside the verdict, and for a new trial, and grant a stay of the proceedings in this cause, for the following reasons:

1st. The verdict is contrary to law and the evidence.

2nd. The court erred in not giving the charges to the jury asked by defendants, and in giving the charges objected to by defendants.

106 3rd. The court erred in charging the jury that 1st alcalde's exercising the powers of judges of 1st instance had no power or jurisdiction over possessory actions, neither as alcaldes or judges of 1st instance, and that such jurisdiction, if exercised by them, was a usurpation of office.

4th. The verdict of the jury is not definite enough on which to render a judgment for possession to plaintiff of any given or definite tract or parcel of land.

5th. The verdict of the jury will not justify any judgment thereon whatever.

6th. There is no evidence that this court ever had jurdisdiction of this cause; no written or other certificate of buenos hombres in this case was filed in the court of 1st instance before this action was commenced, or at any other time.

For the 6th reason defendants move the court to non-suit the plaintiff and dismiss this action.

TINGLEY, *for Def'ts.*

DOMINGO PERALTA.
vs.
INNOCENCIA ROMERO and FRANCISCO GARCIA. } Arrest of judgment.—May, 1850.

107 In this cause a verdict and judgment having been rendered in favor of the plaintiff at this term of the court, the def'ts, by their attorneys, this day came and filed their motion to stay the proceedings, and arrest the judgment, and dismiss the cause, which, being argued and by the court duly considered, was overruled, to which overruling defendants except.

DOMINGO PERALTA
vs.
INNOCENCIA ROMERO and FRANCISCO GARCIA. } Appeal —17 May, 1850.

In this cause the defendants, by their attorney, this day came into court and gave notice to the plaintiff of appeal; whereupon the court ordered that the appellants, Innocencia Romero and Francisco Garcia, execute bond to the appellee, Domingo Peralta, in the sum of one thousand dollars.

Know all men by these presents that we, Innocencia Romero, Francisco Garcia, and Antonio M. Pico, and George B. Tingley, of the county of Santa Clara and State of California, are held and firmly

bound unto Domingo Peralta in the sum of one thousand dollars, for the payment of which, well and truly to be made and done, we bind ourselves, our heirs, and assigns, firmly by these presents. Sealed
108 with our seals, and dated this 22nd day of May, 1850.

The condition of the above obligation is such, whereas the above-bounden Romero and Garcia have appealed to the Supreme Court from the judgment and decision of the district court for the county of Santa Clara, at the April term, 1850, in a suit wherein said Peralto was plaintiff, and said Romero and Garcia def'ts, in which suit judgment was rendered for said Peralta for the possession of the land claimed in his petition, and sixty dollars damages and costs of suit, against said Romero and Garcia: Now, should said Romero and Garcia well and truly prosecute their said appeal to final judgment in said Supreme Court, pay all costs and damages that may be awarded or adjudged against them in said court, and obey, fulfil, and comply with all orders, decrees, and requisitions of said court that may be made in the premises, then this bond to be void, else to remain in full force.

FRANCISCO GARCIA. [SEAL.]
INACIO. ROMERO. [SEAL.]
ANTONIO M. PICO. [SEAL.]
GEO. B TINGLEY. [SEAL]

109 State of California,
County of Santa Clara:

I, H. C. Melone, clerk of the county of Santa Clara, do hereby certify that I have prepared the foregoing transcript in said cause, and that I have carefully compared the same with the original papers and records, assisted by a competent and disinterested person, and find it to be a true and perfect transcript, in words and figures, of all the papers, records, and proceedings in any manner connected with said cause, and that this transcript contains thirty-one pages.

Given under my hand and private seal (there being no seal [L. S.] of office yet provided,) at office, this 11th day of June, A. D. 1850.

H. C. MELONE, *Clerk.*

I, Charles S. Fairfax, clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true and correct copy of the original transcript of the above entitled cause, and now of record in my office.

110 [SEAL.] Witness my hand and the seal of the court, affixed at office, this 23rd day of March, A. D. 1857.

CHAS. S. FAIRFAX, *Clerk,*
By DAV. T. DAGLEY, *D. Clerk.*

Endorsed: Filed March 30, 1857.

J. A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

111 U. S. DIST. COURT,
Nor. Dist. Cal.:

THE UNITED STATES
vs. } No. 304.
INOCENCIO ROMERO *et als.*

Opinion.

It appears from the espediente on file in the archives that, on the 18th day of January, 1844, the brothers Romero petitioned the governor in the usual form for a grant of land, being a sobrante lying between the ranchos of Moraga, Pacheco, and Welsh. This petition was by a marginal order referred to the hon. sec'y for his report.

The secretary referred the papers to the 1st alcalde of San José, with directions to summon Moraga, Pachero, and Welsh, hear their allegations, and return the papers to the office.

On the 1st February, 1844, the 1st alcalde reports that the owners of the lands bounded by the tract have been confronted with the petitioners, and that the former are willing and desirous that the land be granted.

He adds that it had come to his knowledge that one Francisco Soto claimed the tract some six or seven years ago. But as he had never used or cultivated it, the petitioners appeared to him to be entitled to the favor they ask.

112 On the 4th February, 1844, Manuel Jimeno, the sec'y, reports to the governor that, in view of the report of the 1st alcalde, there would seem to be no obstacle to making the grant.

On this report of the secretary the governor makes the following order: "Let the judge of the proper district take measurement of the unoccupied land that is claimed in presence of neighbors, and certify the result, so that it may be granted to the petitioner."—"Micheltorena."

On the 21st March, 1844, the claimants addressed a petition to the governor representing that, owing to the absence of the owners of the neighboring lands, the judge of the pueblo of San José had been unable to execute the superior order (above recited,) and soliciting that his excell'y would grant the tract to them, "either provisionally or in such a way as he should deem fit, while there was yet time for planting," &c.

On this petition Jimeno reports (March 23d, 1844,) that the original order should be carried into effect as to the measurement of the land, and that "as soon as that was accomplished Señor Romero can present himself with Señor Soto, who says he has a right to the same tract."

The governor thereupon made the following order: "Let everything be done agreeably to the foregoing report."—"Micheltorena."

The above documents constitute the whole expediente on file
113 in the archives.

From the documents produced by the claimants from the files of the alcalde's office, it appears that on the same day, March 23rd, 1844, Jimeno communicated to the alcalde the order of the governor, that the sobrante solicited by the Romeros should be measured, and that if it should be necessary a measurement of the adjoining ranchos should also be made, with the understanding that the parties who should become "agraciados" should bear the expense.

It is evident that up to the date of the last order of Micheltorena, no grant of the land had issued. That, pursuant to the recommendation of Jimeno, the governor declined to make even a provisional grant, as solicited, and the final action in the matter was deferred until a measurement should be made, and until Romero and Soto should present themselves.

Jimeno does not seem to have finally adopted the opinion of the alcalde, that Soto had forfeited his rights to the land, for he recommends to the governor, as we have seen, that the land should be measured without delay, and that *then* "Romero should *present himself*, joined with Señor Soto, *who says he has a right to the same land.*"

In this recommendation the governor concurs.

114 There is certainly nothing in these proceedings which indicate that the governor had finally determined to grant the land, tho' it is evident that he regarded the application with favor. Still less can any of the orders made by him be construed to import a present grant. On the contrary, it is clear that the governor refuses to make even a provisional grant, but insists that a measurement shall first be made, and then that Romero and Soto shall appear before him, evidently with a view of determining the rights of the latter. The subsequent proceedings, as shown by documents exhibited by the claimants, confirm this view.

On the 15th January, 1847, Romero and Garcia, the present claimants, appeared before John Burton, the alcalde of San José, and execute a paper in the presence of the alcalde and two witnesses, reciting a sale by Romero to Garcia of one-half the land, and stipulating that both parties should remain *subject to the final result*, *if the government grant it in ownership*, "and if the contrary should be the case, then Garcia should lose equally with Romero, without any right to reclaim the consideration paid." This paper is signed by the parties, the alcalde, and the witnesses.

115 On the 28th May, 1847, José Romero addressed a petition to John Burton, alcalde of San José, presenting that as early as 1844 an order from the former government had been sent to the alcalde's court requiring a measurement of the land called "Juntas." That such measurement had not yet been made. He therefore solicits the alcalde to give him a testimonial of the reports which, in the year 1844, were sent to the government, "*so that we can be granted said land.*"

The alcalde, in a marginal order, directs that the land should be measured according to the original order of the supreme government.

In the margin of the order transmitted by Jimeno, under date March 23d, 1844, the alcalde writes: "Be it done accordingly on the 9th April, 1847. The interested parties will proceed to take possession of the mentioned land according to the order of the government. I further order that in case any bordering land-owner demand it, a mensuration of his land be ordered.

"JOHN BURTON, *J. P.*"

It appears, moreover, that about two months before the date of their last petition, viz, on the 31st March, 1847, José Romero had addressed a petition to the same alcalde, representing that in some years before he had solicited a piece of land in the Cañada de San Ramon, and bordering upon lands of Don M. Castro, and that his excel-
116 lency had ordered the lands of Castro to be measured, which had never been done.

The petitioners further stated that they were two brothers, with a numerous family, and were without any piece of land whatever to raise cattle; they therefore begged the alcalde to provide for them as soon as possible, that they might retain and locate their stock.

The alcalde, on the 5th April, orders that the fulfilment of the superior order should be at once proceeded to.

The entry in the marginal order transmitted by Jimeno was made on the Romero's petition of the 31st March, and not on that of the 28th May, above referred to, for it directs the measurement to be proceeded to on the 9th April.

And finally, on the 27 Dec., 1847, H. S. Demick, then alcalde, makes an order in which, after reciting that disputes as to the boundaries existed between the Romero and Domingo Peralta, he directs that the boundaries be established and adjusted in the manner specified in the order of the governor dated 23rd March, 1844.

I have stated the contents of these various documents with some particularity, because an attempt has been made since the rejection of the claim by the board to show by parol that a final grant issued to the Romeros, which has been lost.

117 We have seen that the last document in the expediente is the order of the governor of the 23rd March, 1844, adopting Jimeno's recommendation that a measurement should be made before issuing the final grant, or even a provisional one, as solicited by Romero—and even then it does not seem that the grant was certainly to be made, for Romero and Soto were to "present themselves," evidently for the purpose of enabling the governor to ascertain their respective rights.

Nothing further seems to have been done either by the government until 1847. On the 31st March of that year we find the Romeros representing to the alcade that the governor had some years before ordered the land to be measured, which had not been done; and that they were without any piece of land whatever, and they beg the alcade to provide for them. The alcade thereupon directs that the superior order of March 23, 1844, be proceeded to.

On the 28th May, 1847, the Romeros again petition the alcade, representing that as early as 1844 the governor had sent to the alcade's court an order requiring a measurement of the land. They therefore ask a testimonial of the reports and orders in his office, "so that *we may be granted the land.*" The alcade again directs
118 the superior order of March 23d, 1844, to be complied with.

And on the day following a declaration is made before the alcade by Antonio M. Pico that Don J. Moraga and Don L. Pacheco, the colindantes, had declared that for their parts the surplus of land which does not belong to them "*could be granted to the Romeros.*"

And, finally, the deed from Romero to Garcia of January 15th, 1847, expressly stipulates that both the parties to it should remain subject to the final result, "*if the government grant it in ownership, and if the contrary should be the case, then Garcia should lose equally* with Romero, without reclamation."

These documents appear to me to establish beyond doubt that all action of the government on the application of the Romeros terminated with the order of March 23, 1844, directing the measurement as an indispensable preliminary to a grant, either final or provisional.

That during the year 1847 the petitioners made several attempts to have that measurement effected, but apparently without success; and
that up to December, 1847, neither they nor any one else pre-
119 tended that the order of March 23, 1844, was not the last act
of the government in the premises.

The parol testimony offered to prove that a grant was issued will be briefly adverted to:

C. Brown swears that the Romeros have lived on the rancho since 1840, and that he always understood they had a grant. He does not pretend to have seen it.

James M. Tice swears that he has searched for the title papers but has been unable to find them. J. J. P. Mesa saw a bundle of papers in Romero's hands on his return from Monterey, in 1844.

The bundle was not opened, but Romero *said* they were his title papers. He subsequently saw Micheltorena's order for the measurement of the land. He does not pretend to have seen any grant. It is to be observed that Mesa was examined before the board and did not mention this circumstance, and that he can neither read nor write.

Grant

Inocencio Romero, who disclaims any present interest in the land, swears that he had a grant, that he gave it to Mr. Tingley to be presented to the board, and that since then he has not seen it. He also
states that the grant was made by Micheltorena a short time
120 after he arrived in the country, and that Arce, who was then
his secretary, delivered it to him.

The espediente, however, shows that Jimeno was the secretary at least until March 23, 1844; and as it is clear that at that date the grant was suspended until a measurement should be made, the title papers seen by Mesa in the hands of Romero on his return from Monterey, in 1844, must have been only the papers now produced.

The testimony of Mr. G. B. Tingley is the only evidence in the cause which approaches proof that a grant issued.

See

This witness swears that on the trial of a suit between Domingo Peralta and the Romeros a grant from Micheltorena to the latter was produced in evidence; that the petition was for a sobrante; that the signatures were genuine, and that one Sandford took the papers and he has never seen them since.

On his cross-examination he states that the papers produced were the original petition and the marginal order of reference; an information signed by A. Pico; then a decree of concession; and final, a title in form, with a condition that the grant should not interfere with the adjoining grants.

If these papers were produced they must all, with the excep-

121 tion of the grant, have been procured from the archives. For the petition, the informes and the decree of concession form part of the expediente, which remains on file.

That expediente is in evidence in this cause, and contains no decree of concession whatever nor any draft or "borrador" of the formal title delivered to the party, as is almost invariably the case where such a document issued. On the contrary, the last order of governor in effect refuses, as we have seen, to grant the petition for even a provisional title until a measurement was made, which clearly was not done until after December 1847, if at all.

Besides, if all these papers were procured from the archives, and were delivered to Sandford, how does it happen that only a part of them were restored to the archives and are now produced.

José Ramon Mesa, a witness produced on the part of the U. S., testifies that he was present at the trial of the suit referred to by Mr. Tingley. That no formal title was produced by the Romeros, but only a provisional license to occupy, subject to the boundaries of the neighboring proprietors, during the pendency of the proceedings to
122 obtain a title. The witness further swore that he heard Inocencio Romero state to Domingo Peralta, in reply to an inquiry as to what title he had, that he had no title—that all he had was a provisional license. That on several occasions he heard Garcia say that he had no title, and that he had intended to take steps to get one, but that all he had was a "provisional license."

This provisional license is in all probability the order made by John Burton, justice of the peace, in April 1847, on the margin of the governor's order of March 23d, 1844, for the measurement of the land, and was in compliance with Romero's petition to him of the 31st March, 1847. The justice of the peace directs that "the interested party will proceed to take possession of the land according to the order of the government," &c. As a copy of Jimeno's order, with this marginal entry of Burton, appears to have been furnished to Romero, and by him sent to Garcia, it is in all probability the "license" referred to. It will not be pretended that any rights could be conferred by such an order of an American justice of the peace, in April 1847.

The record of the suit between Peralta and the Romeros has
123 been produced. It contains no evidence whatever even tending to show that a grant was produced at the trial.

Antonio M. Pico, a witness produced by the claimants, swears that he received an order from the governor to put the coterminous neighbors, Pacheco and Moraga, into possession of their lands, and to measure the same for the purpose of separating them from those of the Romeros. That he was directed by the same order to put the Romeros in possession of the overplus. That he summoned the colindantes, but they did not appear. That he did not then execute the order but repeated the summons to them. That the Romeros made a complaint to the governor, and he, the witness, received from the latter a new order to carry the former into effect, upon which he told the Romeros to go there and settle, which they did in 1844. This witness explicitly states that no title to the land in favor of the Romeros was ever exhibited to him.

The orders referred to by Pico are obviously those contained in the expediente. The first order did not, as he supposes, direct him to put the Romeros in possession, but only to measure the land and certify the result, so that it may be granted. Romero's complaint or
petition to the governor, stating the failure of the alcalde to
124 measure the land, and asking for a provisional grant, we also
find in the expediente, and also the 2nd order of the governor, which, like the former, only directs the measurement of the land. The governor having, as we have seen, adopted Jimeno's recommendation, that the land should be measured and Soto and Romero should present themselves before any grant should issue.

On the parol proof alone, I should come to the conclusion that Mr. Tingley is mistaken in supposing that a grant for the land was ever produced. But the evidence afforded, not only by the expediente but by the repeated declarations of the Romeros themselves, in their various petitions and in the conveyance to Garcia, remove every possible doubt on the question.

The facts of the case are unmistakable. The Romeros solicited land which the governor was disposed to grant. He directed a measurement preparatory to making the grant. And this measurement never was effected. I cannot perceive how this court can recognize these proceedings as giving any title to the land. It may be admitted that in 1844 they went upon the land, as stated by Pico, tho' if
so, it is singular that John Burton, alcalde, should in April,
125 1847, have ordered "the interested parties to proceed to take
possession of the mentioned lands, according to the order of the government."

But this occupation, not authorized, so far as appears, by the government, and only made in pursuance of a verbal permission of Pico, and without the measurement of the land, as required by both orders of Micheltorena, can hardly be deemed to have conferred any title, either legal or equitable, upon the claimants.

The case is, perhaps, a hard one, for there seems no reason to suppose that the grant would have been refused if the measurement had been made and Soto's rights had been found to have been forfeited. But no grant, either perfect or inchoate, was made, nor any promise given that one should be made.

The petitions were favorably received, a provisional grant refused, and a measurement directed. There the action of the government ended, and certainly such proceedings did not confer such a right of property in the land as this court can recognize.

The claim must be rejected.

Endorsed: Filed Sept. 16th, 1859.

W. H. CHEVERS,
Deputy Clerk.

127 *Order granting stay of proceedings for one week.*

United States district court, northern district of California.

THE UNITED STATES
vs.
INOCENCIO ROMERO *et al.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Friday, the 18th day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs. } No. 304.
INOCENCIO ROMERO *et al.*

On motion of E. A. Lawrence, counsel for claimants, it is ordered that a stay of proceedings for one week be allowed, to enable claimants to move for leave to open case and to produce further testimony.

Filed September 18th, 1857.

JOHN A. MONROE, *Clerk.*
By J. EDGAR GRYMES, *Dep't.*

128 *Motion and affidavits of E. A. Lawrence.*

In the district court of the United States for the northern district of California.

INOCENTIO ROMERO
vs. } No. 304.
THE UNITED STATES.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

E. A. Lawrence, of said county, being sworn, says that he is the same who has heretofore made his affidavit on this motion; that he has procured the affidavits of Richmond & Winston since making his last affidavit, which are filed herewith; that he has, at great expense, sought to procure the original title papers in said cause, which he is informed and verily believes were last in the possession of said Sanford, and contained in a box or trunk, left by him at Benecia, containing his papers; that he has used extraordinary diligence in endeavoring to find said trunk or box containing said Sanford's papers, but has been unable to find the same, and verily believes that they have been lost or destroyed.

Deponent further says that he has been informed by Francisco Arce and Manuel Castro that an honest and *bona fide* title issued to the

Romeros from Micheltoreno; that said Arce told deponent that he (Arce) wrote the original petition for the Romeros, and, that by 129 documents in his possession at San Luis Obispo, he would be able to give documentary evidence of the dates of the grant and other matters showing its existence. Deponent further says that said Arce is now in the southern district and beyond the jurisdiction of this court, and that his testimony can only be taken by deposition; that he declined to make an affidavit until after consulting his papers, and that deponent has therefore been unable to procure the same.

Deponent further says that Francisco Arce told deponent that Francisco Soto had a spite against one of the Romeros and put in his application for the said ranch for the purpose of preventing the Romeros from obtaining a grant, but that subsequently this matter was arranged, and the grant to the Romeros issued.

Deponent further says that he is informed that Innocentio Romero will testify that Francisco Soto put in a petition for a portion of the same ranch, but that Micheltoreno refused Soto's petition, on the ground that one ranch, the San Leandro ranch, had been granted to him, and that he could not have two ranches granted to him.

Deponent further says that he has carefully examined the cases in the surveyor general's office, which were presented to the land commission for the purpose of finding said petition of Soto and the proceedings thereon, but deponent says that there is no petition pre- 130 sented in behalf of Soto or his heirs for any ranch except the claim of Barbara Soto and al., claimants for the San Leandro ranch, as the heirs of Francisco Soto, that there is no expediente in the surveyor general's office, or any other manuscript, shewing any petition for said ranch by Soto, or any other person for him.

This deponent further says that he is satisfied that considerable testimony can be taken at Monterey, the former capital of California, of which this deponent is now ignorant, tending to shew the existence of a grant to the Romeros.

This deponent further says that he is fully convinced and satisfied, from his examinations and investigations in reference to the title to said ranch, that the same was granted to the Romeros in good faith and in absolute property, and that the title papers are now lost, as above mentioned.

Deponent further says that he has been informed by Innocentio Romero, and expects to prove by him, that his two brothers can neither read nor write; that Burton, the alcade at San José, drew up most of the papers which were filed in the alcade's office himself, without the knowledge of said Innocentio, he having been a friend of the Romeros, and was endeavoring to assist them in fixing their boundaries.

E. A. LAWRENCE.

Sworn to and subscribed to before me this 23d day of Nov., 1857.

J. EDGAR GRYMES, *Deputy Clerk.*

Filed Nov. 20th, 1857.

J. EDGAR GRYMES, *Dep. Clerk.*

Petition for rehearing.

131 In the district court of the United States for the northern district of California.

INNOCENTIO ROMERO, *et al.*
vs.
THE UNITED STATES.
} No. 304.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

The petition of the claimants in the above entitled cause respectfully represents to this honorable court—

That since the rendition of the opinion of the court herein, rejecting said claim, they have become acquainted with new and important and material facts to prove the existence of said grant, and the loss of the same, which said facts were before to your petitioners unknown, and which said facts appear more fully from the affidavits hereto attached, and forming part of this petition; that said petitioners made diligent efforts to procure similar testimony before said cause was submitted for decision, but that they were unable to procure the same, as more fully appears by the affidavits hereto attached.

Wherefore your petitioners pray this hon. court to grant a rehearing of said cause, and that the same may be restored to the callendar for further proofs and for such other relief as shall seem meet in the premises.

J. B. CROCKETT,
Att'y for Petit.
E. A. LAWRENCE,
Att'y for A. C. Campbell.

Filed Nov. 20, 1857.

J. EDGAR GRYMES, *Dept. Cl'k.*

Affidavit and motion of E. A. Lawrence.

132 In the district court of the United States for the northern district of California.

INNOC. ROMERO *et al.*
vs.
THE UNITED STATES.
} No. 304.

NORTHERN DIST. OF CALIFORNIA, *ss*:

E. A. Lawrence, of said county, being sworn, says that he has been engaged as counsel in the above cause with J. B. Crockett, esq'r, the att'y of petitioners, for the last 10 or 12 months; that he became counsel therein by reason of purchase of a portion of said ranch at that time.

Deponent further says that immediately after his said purchase he devoted his whole attention to the prosecution of said claim before this court; that he took the testimony which was taken in this court on behalf of the claimants; that he made a diligent and careful search and inquiry after the original title papers in said cause, but from the information which he was enabled to obtain he verily believes said title papers were lost; that with that impression and belief he took

such secondary evidence of the existence, loss, and contents of said title papers as came to his knowledge, after a careful inquiry, for such testimony in places and from persons where the same was most likely to be found; that the testimony heretofore taken herein was
133 all the testimony which deponent was aware of and enabled to obtain, before the submission of said cause, which deponent considered at all material or reliable in said cause; that deponent knew of the existence of other witnesses who could, in some minor points, corroborate the testimony of Mr. Tingley and others, but which testimony could add no more force to the testimony already taken, and which was withheld as immaterial by advice of Col. Crockett and other parties interested in the prosecution of said cause.

Deponent further says that since the publication of the opinion of the court in this cause he has heard of very important testimony of which he was heretofore entirely ignorant; that said testimony is embraced in the affidavits of Judge Redmond and others herewith filed; that said Redmond was discovered as a witness in this cause by mere accident from hearing some remarks of C. B. Strode, esq., in the International Hotel in this city several days after the decision of said cause, and while he was in this city on a temporary visit. Deponent further says that the atty's and parties interested in said cause were entirely ignorant of the value of the testimony of C. B. Strode until after the publication of the opinion of the court herein; that said opinion occasioned talk and remarks which led claimants to the discovery of this and other testimony of which they were before
134 entirely uninformed.

Deponent further says that he has made every endeavor to find the original title papers in said cause; that he has procured persons to go to Benicia and search for the title papers among the old papers of Mr. Sanford; that said persons have been unable to find said Sanford's papers, as appears from the affidavits herewith filed. Deponent further says that he has caused letters to be addressed to Mr. Winston and Mr. Richmond in the northern portion of this State to ascertain if they have said Sanford's papers, and that he has not yet been able to ascertain that said papers are now in existence, and he verily believes the same to be lost.

Deponent further says that he has been informed by Manuel Castro, former prefect of California, that he and Francisco Arce and two others, clerks under Micheltoreno and now living at Monterey, can all testify positively as to the existence and due execution of the original grant of said rancho from Micheltoreno to the Romeros.

Deponent further says that this affidavit and motion are not made for the purpose of delay, but to further the ends of justice, and further says not.

E. A. LAWRENCE.

Sworn and subscribed before me this 5th day of October, 1857.

JNO. A. MONROE,
U. S. Commissioner.

Filed Nov. 20, 1857.

J. EDGAR GRIMES, *Deputy Cl'k.*

135 *Affidavit of J. W. Redmond, admitted as deposition by stipulation, p.* 241.

In the district court of the United States for the northern district of the State of California.

INNOCENTIO ROMERO *et al.* *vs.* THE UNITED STATES.	No. 304.

NORTHERN DIST. OF CALIFORNIA, *ss:*

J. W. Redmond, of Santa Clara county, being sworn, deposes and says that he is a practicing attorney and has been for many years; that in 1849 he crossed the plains and arrived in California in August and settled in San José, and has resided there ever since; that he is a good latin scholar and learned the Spanish language with great facility on account of his knowledge of the latin: that he was elected county judge of Santa Clara county in April, 1850, on the first organization of the county, which office he held for more than three years, when he resigned; that previous to and during this period deponent was and still is a practicing attorney, practicing in all the courts excepting his own court; that he applied himself very diligently to learning the Spanish language, and in 1850 was sufficiently proficient therein to hold conversations and interpret title papers; that he had seen many of the acknowledged signatures of Micheltoreno, and was familiar with his handwriting from comparison; that the principal business of deponent was connected with the examination and
136 investigation of Spanish titles; that he was employed in almost every case pertaining to Spanish titles in San José; that he was engaged on one side or the other in nearly every case except in his own court, where there were law suits about Spanish titles.

Deponent further says that in 1850 he was employed by one Attozo or Attoza, a South American, to search the title of the Romeros to the tract of land in the county of Contra Costa, which said ranch is the subject matter of this suit, and to report to said Attoza as to the genuineness and validity to said title; that said Attoza was about to purchase a portion of said ranch and called on deponent 3 or 4 times in regard thereto; that deponent had all the original title papers of the Romeros to said ranch in his hands at that time and carefully examined the same; that deponent had said papers in his possession for two weeks; that during the day he was engaged in court, but in the evenings and leisure time carefully examined said title papers; that the signature of Micheltorena to said documents were genuine, as deponent believes from his familiarity with his said signature; that said grant was a grant in fee of the land, and was in the usual form of such Spanish concessions made by Micheltoreno, and was on stamped
137 paper; that deponent was perfectly familiar at that time with such Spanish documents; that he had examined very many Spanish titles at Monterey, Santa Cruz, San José, and Martinez, in all of which towns deponent practiced.

Deponent further says that he examined said title; that it constituted a bundle of papers, sewed together, containing a petition by the three brothers Romero for the land, the reports of the alcalde Pico, also by Jimeno; also a desiña or map of the land, and a final concession by Micheltorena, in full and absolute property of the land solicited; that said title was full and complete, with the exception that it lacked the approval of the departmental assembly; that the description of the ranch was the sobrante, or all the land lying between the ranches of Julien Welch, Moraga, and Pacheco, and the surrounding neighbors, and had a Spanish name, which deponent has now forgotten; but deponent says he was upon the land either in the latter part of 1850, or early in 1851; that he had his notes of the grant with him, or the grant itself, at the time he was on the ranch, and knew the land; that it was situated in Contra Costa county, and negro Garcia was living on the land at that time; and deponent stoped 2 nights and 3 days with him at his house.

Deponent further says that he examined said title in con-
138 nection with Geo. B. Tingley and Hon. James M. Jones,
who is now deceased, and late judge of the district court of the southern district of California; that said Jones was an excellent Spanish scholar; that all three pronounced said title to be as valid and genuine a title as any in California, with the exception that it had not been approved by the departmental assembly; that said title was a full and absolute concession of the land; that upon said examination he advised said Attozo that it was safe to purchase, as said title was a good and valid title to the land.

Deponent further says that afterwards, and during same year, or early in 1851, he was employed by negro Garcia to defend a suit bro't by Domingo Peralta *vs.* Garcia and Romero, in relation to a portion of this same land; that on the trial of said suit it became necessary to introduce the title papers of the Romeros above mentioned, and that they were had in court, and were examined and handed to the jury without objection, and were admitted by Mr. Sanford, the opposite counsel, to be a genuine and valid title to the land; that deponent further says that he again at this time examined said title, and found it to be the same as before mentioned; that the only point raised on said trial was that the title of Peralta was the oldest title, and that
therefore he was entitled to the land, the dispute being only
139 a dispute as to boundaries, the titles not being denied on
either side; deponent further says that Geo. B. Tingley was associated with deponent in the trial of said cause.

Deponent further says that Sanford, the attorney for Peralta, had a dispute with Garcia about an old fee which Sanford claimed as due him from Garcia, and which Garcia had never paid; that Sanford told deponent that he (deponent) would never get any fee from Garcia, as Garcia never paid any fees, and had never paid him the fees due him from Garcia; that the last deponent ever saw of said title papers they were in the hands of the jury on that trial; that he supposed the said papers belonged to the court, and he did not take them from the court, and did not know until recently that they had been withdrawn from its custody; that who took said papers after said trial, or what became of them from that day to this, deponent is entirely ignorant; that said case afterwards went to the supreme court, but upon points not involving the validity of the title on either side.

Deponent further says that John Burton was alcalde at San José in 1847; that he is now dead; that said Burton was an English sailor and a very illiterate man; that he understood the provincial Spanish; both wrote and spoke it very imperfectly; that deponent has
140 had frequent occasion, both as a judge and as an attorney, to examine his records, and that the same are very imperfect.

Deponent believes that he has seen said Burton, and thinks that he has known him personally, but that the knowledge of the matters of which he speaks was derived from his examination of his papers and records, and from common report at San José, and from his records and official documents having been frequently the subject of proof and judicial investigation before deponent as a judge and as an attorney.

J. W. REDMOND.

Sworn and subscribed to before me this 25th day of Sept., 1857.

JNO. S. HAGER,
Dist. Judge 4th Ind. Dist.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES,
Deputy Cl'k.

141 U. S. Dist. Court.

INNOCENTIO ROMERO
vs. No. 304.
THE UNITED STATES.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Affidavit of Geo. B. Tingley.

Geo. B. Tingley, of said county and district, being sworn, says that he is the same who was examined in the above entitled cause. Deponent further says that he stated upon said examination, and now says, that he carefully examined the original title papers of the Romeros, in said cause; that the same were a bundle of papers, commencing with the original petition, the informe, &c., and ending with an absolute grant of the land. Deponent further says that he has examined this day the Spanish documents, being 7 in number, attached to the deposition of his before the land commission, now on file in the surveyor general's office, and says that they are not the papers which he testified to in his previous examination; that those papers are bound together and do not have the appearance of ever having been.

Deponent further says that he was at the time of said trial perfectly familiar with Spanish grants; that a large portion of the business of deponent at that time was connected with the examination of Spanish titles; that he was sufficiently familiar with the Spanish
142 language at that time to read and understand titles to lands, and

knows the title of the Romeros was a concession in fee of the sobrante, as stated in deponent's deposition.

Deponent further says that previous to this time he was called upon by one Attozo, who was about to purchase a portion of said rancho, to examine and report upon the title; that said title papers were placed in his hands for examination; that after a careful examination of said papers he pronounced said title to be a genuine and valid title in full property and not a provisional grant. Deponent further says that it is his impression that Judge Redmond and James M. Jones, now deceased, of Santa Clara county, examined said title with deponent; that said Jones was a thorough Spanish scholar, and that it was the opinion of all three that said title was a valid title or concession, in the usual form, to the petitioners; the only question in the minds of deponent and the others was that said grant had not been approved by the departmental assembly, and there was a doubt at that time whether such grants were valid. Deponent gave his opinion that a title was valid without such approval.

Deponent further says that if the papers on file in the surveyor general's office are part of the papers used upon said trial, that they
are not all of them; that there was an additional paper,
143 dated some time after the report of Pico, the alcalde, on which
was a final concession of the land, in the usual form, conceding
the land prayed for to the petitioners and their families, which said concession was signed by Micheltorena, and was much longer than any paper or memorandum signed by Micheltoreno in the suveyor general's office.

GEO. B. TINGLEY.

Sworn and subscribed before me this 24th day of Sept., 1857.

P. K. WOODSIDE,
Notary Public.

Filed Nov. 20th, 1857.

J. EDGAR GRIMES,
Dep't. Cl'k.

Affidavit of C. B. Strode.

U. S. district court for the northern district of California.

INNOCENTIA ROMERO *et al.*
vs. No. 304.
THE UNITED STATES.

NORTHERN DISTRICT OF CALIFORNIA:

C. B. Strode, of the city of San Francisco, being sworn, says that he is a practicing attorney in said city, and has been since the fall of 1850; that he now resides in Oakland; that immediately after his
arrival in this city he went into copartnership with Wm.
144 Carey Jones in the practice of the law; that shortly afterwards
Hon. P. W. Tompkins became a member of the same firm,
under the name of Jones, Tompkins & Strode; that the principal business of said firm was the prosecution of land claims before the

board of commissioners to ascertain and settle private land claims in the State of California; that after said Tompkins became a member of said firm the exclusive business of affiant was to attend to land claims; that affiant imperfectly understood the Spanish language, but still, that he understood it sufficiently to read and interpret title papers; but having a very large and lucrative practice, preferred, as a matter of expediency and justice to his various and many clients, to keep interpreters of the Spanish language constantly in his employment; that being the partner who had most intercourse with the California land-holders, he was very frequently called into the country and country towns, on which occasions it was his custom to take an interpreter with him. That in 1850 and 1851 he was well acquainted with F. H. Sanford, esq., who represented himself as a native of Georgia; that in 1851 affiant was keeping house in the city of San Francisco; that on visiting said city said Sanford was in the habit of staying at the house of the affiant; that in 1851 said Sanford told affiant that he was in great pecuniary distress; that from time to time affiant gave him small pecuniary assistance; that in 1852, and, as affiant be-
145 lieves, in the latter part of said year, without any data to fix the exact period, affiant met said Sanford in the town of Benicia; that said Sanford expressed his thankfulness to affiant, and desired additional pecuniary advances; that said Sanford being an educated, and, as affiant believes, a pure man, without hesitation afforded him the assistance desired.

Affiant further says that at the same time he went to the office of said Sanford, esq., in Benicia; that he found from conversation with said Sanford that he was partially deranged on account of domestic troubles, but, as affiant believes, perfectly sane on every subject not connected with his family affairs; that in his office was a desk, a table, bed, trunk, and a box; that said box was a common tea box, as it is commonly called, being of wood and painted; that affiant's attention was particularly called to the said box and trunk at that time, and more particularly since; that said Sanford told affiant in said office that he had in his possession an important paper, being the title paper to the Romero grant in Contra Costa county; that he (Sanford) had taken possession of the same after a trial at law had in the pueblo de San José, because a debt was due to him by the party who was entitled to the title papers; that affiant was at that time the attorney for several of the colindantes or adjoining rancheros, and for that reason felt a deep interest in ascertaining boundaries claimed by the said Romeros; that to the best of his ability he read the said title papers; that
146 by his experience and examinations of similar documents he knew the signature of Micheltoreno; that the grant was a concession to the Romeros in full and absolute property for the sobrante between various ranches which made an absolute definition of its boundaries; but, that affiant, being diffident of his knowledge of the Spanish language, sent for his interpreter, Mr. Gutierrez, who he is now informed lives in the city of Havanna, Cuba; it may be that affiant is mistaken and that Adolf Sellman is the one who was interpreter; that he is informed said Sellman now lives in the mission of San José. But affiant felt deeply interested in said title because of its connection

with the surrounding ranches; that after an examination and the interpretation of the title papers fully made to affiant—Judge Swan, of Benicia, was present at a portion of the conversation—Mr. Sanford proposed to place in the hands of affiant the said title papers, with the remark that affiant could make much money out of the same; that affiant's reply was that he neither thought it decorous or just to obtain a fee for the production of title papers under such circumstances; that affiant, about five years ago or more, told one party interested in said ranch of the existence of said papers; that he is informed and
verily believes that every exertion was made to obtain the same
147 by that party, and, as he is informed, without success; that he
was informed of the great pecuniary embarrassment of said
Sanford; that he has been informed that the trunk and box of said Sanford containing all his papers have passed into other hands; that said Sanford left for Georgia in the latter part of 1852, as affiant verily believes; that affiant saw said Sanford just before he left for the States, and that said Sanford told him (witness) that he was just returning to his family in the State of Georgia; that said affiant does not know personally what became of the trunk, box, and papers of said Sanford, but has learned that the same may be in the possession of the Hon. Jos. Winston, or of Mr. Richmond, his former landlord, who seized upon his goods for rent due; that no telegraphic dispatch would reach either of them from this city; that both of them live in the northern portion of this State; that affiant has written to both of said parties, both by mail and express, in order to ascertain whether either of them have said box and trunk or papers; that he has not yet had sufficient time to obtain an answer from either, but expects to hear in a few days; that affiant went on Monday last, in company with Mr. J. M. Tice, to Benicia to find said papers, trunk, &c., that being the last place of residence of said Sanford; that they made diligent search for the same
and often heard of the existence of them, and found what had
148 become of the signboard of said Sanford, but was unable to find
said papers, all of which more fully appears by the affidavits
procured by affiant in Benicia and filed herewith.

Affiant further says that the title papers examined by him were a considerable bundle of papers sewed together, commencing with the original petition by two or 3 brothers Romero, (affiant does not know which,) followed by the intermediate reports, and concluding with an absolute grant of the land in full property in accordance with the petition; that the same was on ordinary Spanish stamped paper, unglazed; that said final concession was in the usual form of Mexican grants and was for the sobrante, containing 5 leagues poco mas y menos, of the adjoining ranches of Moraga and Bernal, Guillermo Welch, Lorenzo Pacheco, and others.

Affiant further says that the final concession was a long document and signed by Micheltoreno, much longer than any paper now on file in the said cause in the surveyor general's office signed by Micheltoreno; that he has examined the papers in the surveyor general's office and that they are not the same papers heretofore examined by affiant.

Affiant further says that said Sanford told deponent a few days be-

fore he left for the States that he had left the same title papers of the
Romero ranch, together with his other papers, in a bundle in
149 his trunk or box at Benicia, where deponent could find them
if ever he should want them.

Deponent further says, I have carefully examined the docket of land cases before the land commissioners, &c., and do not find no Sanford's name as connected with any land case; and he told deponent that the Romero ranch was the only land title with which he was ever connected.

C. B. STRODE.

Sworn to before me this 25 Sept., '57.

JNO. A. MONROE,
U. S. Commissioner.

Filed Nov. 20, 1857.

J. EDGAR GRYMES,
Dep. Cl'k.

Deposition of Wm. McDaniel, admitted as deposition by stipulation on p. 241.

On application before the hon. the district court of the U. S. for the northern district of the State of California, to open the decree in the case of the Romero grant for land in the county of Contra Costa, Wm. McDaniel, a resident of Benicia, being first duly sworn, says that he assisted C. B. Strode for several hours in an endeavour to find the trunk and box or papers of T. H. Sanford, left in this town; that
although they several times heard of the same as being or
150 having been here after Mr. Sanford left, yet after an earnest
and diligent search the same could not be found; that information apparently tending to a discovery was all that could be found by communicating with persons in the northern portion of this State; that I have ascertained that a telegraphic dispatch could not reach the parties alluded to; that he has no interest in the result and does not know what the result of titles will be, but can safely say he deems it of importance to consult with the witnesses, Hon. J. Winston and J. Richmna, and further says not.

WM. M'DANIEL.

Subscribed and sworn to before me this 22nd day of September, A. D. 1857.

WM. S. WELLS,
Notary Public Solano County.

Filed Nov. 20, 1857.

J. EDGAR GRYMES,
Deputy.

Deposition of Edw. L. Stetson.

State of California, district court U. S. northern district of California.

On motion to open decree on the Romero claim in the county of
Contra Costa, E. L. Stetson, a resident of Benicia, being
151 first duly sworn, says that in the year 1851–1852 he was well
acquainted with F. H. Sanford, an attorney at law; that he

189

met said Sanford in Sacramento, as well as he can remember, in 1852; that said Sanford informed affiant that he was about starting home, but that his clothing and papers were retained in Benicia for a small debt, and that all he needed was enough to get his clothing back; that he knew the furniture in the office of said Sanford in Benicia; that he feels certain that he has seen the trunk and box of said Sanford since he left, which he believes was about the last of 1852; that from common rumor he is informed said Sanford is dead; that affiant has assisted C. B. Strode in a careful search for said trunk and box, but without success; that he knows an earnest and active search has been made for the same.

Further he says not.

EDW. L. STETSON.

Subscribed and sworn to before me this 22nd day of September, A. D. 1857.

WM. S. WELLS,
Notary Public, Solano County.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES, *Deputy.*

152 *Deposition of Thomas M. Swan.*

United States district court in and for the northern district of the State of California.

To open the claim on the Romero grant in the county of Contra Costa.

Thomas M. Swan, being first duly sworn, on oath states that he has been a practicing attorney in, and is now the county judge of, the county of Solano.

That in the years one thousand eight hundred and fifty-one and fifty-two he was acquainted with T. H. Sanford and Charles B. Strode.

That said Sanford left the State of California for the State of Georgia some time in the year one thousand eight hundred and fifty-two or three, as deponent was informed by said Sanford and verily believes. That some time therebefore deponent was present at a conversation between the said Sanford and the said Strode, in the office of the said Sanford in the city of Benicia, county of Solano, relative to the title papers of some rancho in the county of Contra Costa, the particular purport of which deponent cannot recollect save the general matter of conversation. That prior to the departure of said Sanford from this State he had for some time been absent from the town of Benicia, and during the absence of said Sanford from Benicia a trunk and box containing clothing, family portraits, and 153 valuable papers were detained by John B. Richmond, the former landlord of said Sanford, for rent over due and unpaid by said Sanford, and that deponent, for the purpose of releasing the clothing and other articles of said Sanford, paid sixty dollars in the scrip of the county of Solano as rent to said Richmond.

THO. M. SWAN.

Subscribed and sworn to before me this 22nd day of September, A. D. 1857; words and "other articles," "trunk and box," first being interlined.

WM. S. WELLS,
Notary Public, Solano County.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES,
Deputy Cl'k.

154 *Deposition of Bernard C. Whitman.*

STATE OF CALIFORNIA,
County of Solano:

Bernard C. Whitman, being first duly sworn, on oath states that he is an attorney-at-law, and a resident of the town of Benicia, in said county of Solano, and was a resident of said town during the years one thousand eight hundred and fifty, fifty-one, two, and three; that in the years one thousand eight hundred and fifty and fifty-one, or a portion thereof, deponent knew F. H. Sanford, then formerly from the State of Georgia, as an attorney in said Benicia; that some time during the year one thousand eight hundred and fifty-one said Sanford left the town of Benicia for the purpose, as he, said Sanford, avowed, of going to the northern portion of the State of California; that subsequently, on two or three occasions, deponent saw said Sanford in the town of Benicia, and toward the close of the year one thousand eight hundred and fifty-two deponent saw said Sanford in Benicia, when he informed deponent that he intended to depart from the State to his former residence in the State of Georgia, and was then on his way to San Francisco to take the steamer for Panama "en route" for the Atlantic States; and further told your
155 deponent that he, said Sanford, desired deponent to take charge of certain valuable papers which had been deposited with him, Sanford, in his capacity as an attorney-at-law, which deponent then and there agreed to do, but never so did, for that *since* Sanford never afterwards spoke to deponent on the subject, or deposited said papers with deponent.

That deponent is informed and believes that said Sanford did, on or about the time last mentioned, depart from this State for the State of Georgia, and deponent has heard and believes that Sanford arrived in the State of Georgia, and there lived some time; and recently deponent has been informed and believes that said Sanford is dead, and such is common rumor upon the subject.

Deponent knew said Sanford quite well during his residence in this State, and was of the opinion, from the peculiar conduct of said Sanford on sundry occasions, that at times he was hardly sane, though deponent may have been induced to such belief from communications to him made by said Sanford relative to his troubles and difficulties. And further deponent saith not.

BERNARD C. WHITMAN.

Subscribed and sworn to before me this 22nd day of September, A. D. 1857.

WM. S. WELLS,
Notary Public, Solano Co.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES, *Deputy Cl'k.*

156 *Deposition of Artemas W. Wall.*

U. S. district court for north district of California.

INNOCENTIO ROMERO *et al.*
vs.
THE UNITED STATES.
} No 304.

Artemas W. Wall, of the county of Coutramth, being sworn, deposes and says, that some time during the year 1852 or 1853, he, deponent, was present on the occasion of a conversation held between Chs. B. Strobe, esq., and other persons; that the said conversation was on the subject of Spanish grants, and especially relative to the Romero rancho, in Contra Costa county; that on that occasion said Strode stated to the persons with whom he was conversing that he had had the privalege of examining the grant to said Romero rancho; that it was a perfect grant made by Governor Micheltorena; and that said grant was then, as he, said Strode, believed, in the possession of a man whose name deponent does not now recollect; that on a certain occasion said man offered to deliver over to him, said Strode, said grant; that he, said Strode, at that time examined said grant very closely, as he was then engaged in the cases of adjoining ranchos; but that he declined receiving said grant into his possession, 157 owing to the peculiar circumstances under which it was offered to him, said Strode.

A. W. WALL.

Sworn to before me this 25th September, '57.

JNO. A. MONROE,
U. S. Commissioner.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES, *Deputy Cl'k.*

Deposition of Cornelius Yeager.

In the district court of the United States, northern district of California.

INNOCINTIO ROMERO *et all.*
vs.
THE UNITED STATES.
} No. 304.

NORTHERN DISTRICT OF CALIFORNIA:

Cornelius Yeager, being sworn, says that he is now county clerk of Contra Costa county, and resides in the town of Martinez; that he has an interest in the Romero ranch; that he purchased said interest in 1851; that previous to and in contemplation of said purchase, he and one John M. Jones, who now lives on said ranch, went to consult

158 Mr. Geo. B. Tingley, who was at that time a prominent attorney in San José, in regard to the validity of the Romero title; that at said interview in said Tingley's office at San José, he (said Tingley) told this deponent and said Jones that he was perfectly conversant with Spanish titles, and particularly with the Romero title; that he had gone over all the title papers in said case, in a lawsuit between Peralta and the Romeros, and was perfectly familiar with them; that the title to said ranch was as good and honest and valid as any in the State of California, and said to us in familiar language, "Go on, boys, and buy, for you are perfectly safe on that title." Deponent further says that he and said Jones went to San José to consult Mr. Tingley professionally in regard to said purchase.

Deponent further says that in June or July, 1851, he met Mr. C. B. Strode on said Romero rancho, and took him to the house of Capt. Wall, one of the owners occupying of said ranch, for the purpose of finding out as to the validity of said title; that at that time said Strode had a great reputation all through the country for a knowledge of Spanish grants and titles; that said Strode then told deponent and said Wall that he had seen said title papers of the Romeros, and had read them; and that their title was as perfect and valid as any title in California; and that they were perfectly safe in purchasing under it; 159 that he was not attorney for the said ranch, but that, notwithstanding that, he felt that he was not authorized to withhold from them information in regard to the whereabouts of the title papers to which they were justly entitled as owners of said ranch; and that he had seen said papers in the hands of Mr. Sanford, an attorney who had been living at Benicia; that he had seen and read said papers in Sanford's office at Benicia, and that the title was indisputable; that said Sanford was at that time somewhere in the mines. Deponent further says that his answer was, in reply to deponent's statement to said Strode, that he had a great deal of difficulty in finding the title papers of said ranch.

Deponent further says that he has made every endeavor to find said title papers, that he has always heard of the existence of said title and has spent over $100 in travelling around from place to place to find said title; and that he has been unable to find them, and that he verily believes that said title papers are now lost. Deponent further says that in 1852 the owners of said ranch assembled in Martinez and by vote deputized deponent to procure counsel, search for the title papers, and procure witnesses to present and prosecute said claim before the land commission; that this was prior to deponent's 160 making any effort to procure said title papers, as above mentioned.

CORNELIUS YEAGER.

Sworn and subscribed before me this 29th day of September, 1857.

P. K. WOODSIDE, *Notary Public.*

Service of the within petition and affidavit, admitted this 5th day of Oct., 1857.

P. DELLA TORE, *U. S. Att'y.*

Filed Nov. 20th, 1857.

J. EDGAR GRYMES, *Deputy Cl'k.*

Deposition of John B. Richmond.—Stipulation, p. 241.

State of California,
County of Nevada, ss:

John B. Richmond, of lawful age, at present residing in the town and county of Nevada, State of California, being duly sworn, deposes and says:

That in the year 1851 he resided in the town of Benicia, California; that early in the spring of said year E. H. Sanford, a lawyer, 161 rented of him an office in the upper story of the store occupied by him, and used and occupied the same until some time in the spring of 1852, at which time Sanford left Benicia and went to the southern mines. At the time he left, or shortly after, his trunk, containing his effects, was removed and placed in the loft of the building, and there remained until about the time that Sanford left for the Atlantic States, which I think was in 1853. He came down from the mountains, and, as affiant was at that time informed by the occupants of the store, (himself being at that immediate time in San Francisco,) got his trunk and started for San Francisco, complaining, at the time, that he had lost some valuables from his trunk, as this affiant was informed by the parties in the store as aforesaid. And further this deponent saith not.

JOHN B. RICHMOND.

Subscribed and sworn to before me this 6th day of November, A. D. 1857, as witness my hand and seal.

THOMAS P. HAWLEY,
Notary Public, Nevada County, California.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES, *Deputy Cl'k.*

162 *Deposition of Joseph Winston.—Stipulation, p.* 241.

State of California,
Plumas County, ss:

Before me, the undersigned, notary public in and for the county of Plumas, State aforesaid, personally appeared Joseph Winston, who, being by me duly sworn, deposes and says that during the winter of 1853 and 1854 he was residing in the city of Benicia, in Solano county, State aforesaid; that he and one F. H. Sanford, a lawyer by profession, occupied adjoining rooms of the upper story of a building, the lower story of which was occupied as a store or storehouse by John Richmond, or by John Richmond & Co.; that during said winter the said Sanford left the State of California; that said Sanford left in the room occupied by him a trunk and a painted box, in which were contained, among other things, a mass of old papers, the contents of which were never known, or are not now remembered by affiant. Affiant further states that when he left Benicia in 1854, in the fall, that said trunk and box had been removed by some person to affiant unknown; that a short time after said Sanford left, said room was occupied by clerks of the State treasurer, Major Roman, among whom were James Ewing, Mr. Phelan, and John Hays. The 163 trunk and box was removed prior to the occupation of the said room by the aforesaid clerks; and this affiant does verily believe that all the papers and manuscrips contained in said trunk and box were lost.

J. P. WINSTON.

Subscribed and sworn to before me this 26th day of October, A. D. 1857.

In testimony whereof, I hereunto affix my seal of my said office of notary public of said county of Plumas and State of California.

[SEAL.]

JOHN D. GOODWIN,
Notary Public, Plumas county, California.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES,
Deputy Clerk

Affidavit of Vincente Gomez

164 In the district court of the United States for the northern district of California.

INNOCENTIO ROMERO *et al.*
vs.
THE UNITED STATES.

SAN FRANCISCO COUNTY, *ss:*

Vincente Gomez being sworn, says that he was a clerk (escribiente) for Gov. Micheltorena, from the day he landed in Monterey, when he first came to California, till the day he left California; that he often saw the Romros in Monterey during the year 1844; that they were back and forth endeavoring to get a title to their ranch from Gov. Micheltorena; that he does not now recollect all the particulars of said application with refreshing his memory; but that certain parties connected with the governor, and having influence with him, interested themselves in behalf of the Romros, and obtained for them a final concession of their ranch in absolute property; that the ranch they obtained a grant for was in the vicinity of Monte Diablo, in the present county of Contra Costa, and was a sobrante of the ranches of Moraga, and Pacheco, and Welsh, and other neighbors; that he does not recollect to have seen the title papers at the time, but that he heard Micheltorena say that he had given a title to the Romeros 165 for said ranch. That Micheltorena said so to witness himself.

VINCENTE PERF'CO GOMEZ.

Sworn and subscribed before me this 18th day of Nov. 1857.,

EDWARD BYRNE,
Notary Public.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES,
Deputy Cl'k.

Affidavit of Leandro Luco.

In the district court of the United States for the northern district of California.

INNOCENTIO ROMERO *et al.*
vs.
THE UNITED STATES.

NORTHERN DISTRICT OF CALIFORNIA:

Leandro Luco, of said district, being sworn, says that the Spanish language is his native language; that he has read the petitions of John Burton, alcalde, in the expediente on file in the above cause, and also the deed from Romero to Garcia, dated Jan. 15, 1844, (probably 1847,) in the Spanish language; that the language used 166 therein is very bad Spanish; and that it both bad spelling and bad grammer, and such as no Mexican who understood his own language would use in writing any document. Deponent further says that he has read the translations into English, and that they are very bad, and do not express the meaning of the originals.

JOSÉ L. LUCO.

Sworn and subscribed before me this 24th day of Nov., 1857.

J. EDGAR GRYMES,
Deputy Cl'k.

Filed Nov. 24th, 1857,

By J. EDGAR GRYMES,
Deputy Cl'k.

Order for rehearing.

167 District court of the United States for the northern district of California.

THE UNITED STATES
vs.
INNOCENTIO ROMERO *et al.*
No. 304 D. C. No. 654 L. C.

On motion of Innocentio Romero *et als.*, the appellants, by J. B. Crockett, esq., and after argument of counsel of both parties, it is ordered by the court that a rehearing be granted ~~in this cause~~, and that the cause be replaced ~~on the calendar~~ for trial at the next term, with leave to both parties ~~to introduce further~~ evidence.

SAN FRANCISCO, *December* 5, 1857.

Filed Dec'r 5, 1857.

J. EDGAR GRYMES, *Deputy.*

Deposition of George B. Tingley.

169 United States district court, northern district of California.

INNOCENCIA ROMERO *et al.*
vs.
THE UNITED STATES.

SAN FRANCISCO, *December* 15*th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the dist. court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came George B. Tingley, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present: W. F. L. Sloan, for the United States, and E. A. Lawrence, for claimants.

Question by claimants' counsel.

1st ques. What is your name, age, and place of residence?

1st ans. My name is George B. Tingley; 42 years old; and I reside in San Francisco.

2nd ques. Have you been before examined in this cause; if so, has your attention since that examination been called to the ex-
170 pediente on file in the surveyor general's office in this case? If so, state what further have you to state.

Ans. 2nd. I am the same person who has been examined before in this case. I stated in my former examination, and I now say, that I carefully examined the original title papers in said cause; that the same were a bundle of papers commencing with the original petition, the informe, &c., and ending with an absolute grant of the land. I have recently examined the Spanish documents, being seven in number, attached to the deposition of Pico before the land commission, now on file in the surveyor general's office, and I say they are not the papers I testified to in previous examination; those papers are not bound together, and they do not have the appearance of ever having been.

I was at the time of said trial perfectly familiar with Spanish grants; a large portion of my business at that time was connected with the examination of Spanish titles. I was sufficiently familiar with the Spanish language at that time to read and understand titles to land, and I know that the title of the Romeros was a concession in fee for the sobrante.

I further state that I examined the papers in the district court of Santa Clara county, between Domingo Peralta, Francisco Garcia, and Innocencio Romero, I being at the time one of the counsel
171 for one of the parties, and also examined the papers at the instance of Francisco Altoyo; also for a person by the name of John M. Jones. During the trial above alluded to the title papers of the Romeros, or what purported to be such, were in court during

the whole time, which cause lasted for 4 or 5 days. During said cause I had them in my hands at least forty times. They were interpreted to me by one Frank Godden, who, I have heard since, is dead. My recollection of the papers used there was four or six attached together in the usual form of Spanish grant, and that they contained a petition, an order for information--the information, I think, was signed by Pico, as alcalde—and a concession of the land, or sobrante, in the usual form, with, I think, a restriction that they should not interfere with the lands of the adjoining proprietors, which, I think, was signed by Micheltorena.

It was conceded on the trial, by Frederick H. Sandford and his associate counsel, that the land had been granted to the Romeros, but said that the grant was not valid, because it had been previously granted to Peralta. The genuineness of the titles on both sides were not controverted by either party. They were both admitted to be genuine titles. The whole dispute was about the boundaries.
172 The papers that I saw in the surveyor general's office did not seemed to have been attached together in the same way that the papers were that I examined in court, and certainly did not contain a final grant or concession of the land, as was the case with those examined in court, as alluded to before. I cannot say that I recognized the papers as those I saw in court.

Cross-examination.

Ques. 1st. Do you remember to have observed in that expediente, as used in the trial at San José, whether it contained a decree of concession as distinct as is usually called the titulo.

Ans. 1st. It is my recollection that there was a decree of concession. I mean by that the grant of the land by the governor, or final title, as interpreted to me, read, as nearly as I can remember, as this: "That inasmuch as the petitioners have prayed for a grant of land as described in their petition, I have thought proper to concede the same to them for the benefit of themselves and their families." In addition to this, my impression is that there was a restriction that the grant should not infringe on the property of the adjoining owners; likewise that they should perform certain regulations required of them in regard to improving and occupying the land.

173 Ques. 2nd. Do you remember who produced those documents in the court of San José on the trial?

Ans. 2nd. I think that it was produced either by the Romeros or the Garcias. They were sent for, and brought by Garcia or Romero.

Ques. 3. Do you remember whether there was a written translation used on the trial, or did some one simply translate them verbally on the trial?

Ans. 3rd. They were translated verbally on the trial by Godden, I believe. Each party had his interpreter, and they concurred in the correctness of the translation.

Direct resumed.

Ques. 4th. Did you ever examined the Romero title papers in connection with other attornies? If so, was any objection raised to the title; if so, what was it?

(Question objected to as new matter; and further, on the ground that it is not competent to examine the witness touching the opinion of other parties.)

Ans. 5. I did in connection with Joshua Redmond, and, I believe, James M. Jones, who had the reputation of being one of the best Spanish scholars at that time in California.

Ques. 6. Had it the approval of the departmental assembly?

Ans. 6. It had not.

174 (Signed) GEO. B. TINGLEY.

Sworn and subscribed before me this 15th day of December, A. D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed Dec'r 26th, 1857.

J. EDGAR GRYMES,
Deputy Clerk.

Deposition of Vicente P. Gomez.

United States district court, northern district of California.

INNOCENCIO ROMERO *et al.*
vs.
THE UNITED STATES.

SAN FRANCISCO, *December 15th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the dist court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c , came Vicente P. Gomez, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of said board
175 of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by John Argus, a sworn interpreter.

Present: W. F. L. Sloan, for the United States, and E. A. Lawrence, for clainants.

Question by claimants' counsel.

1st ques. What is your name, age, and place of residence?

1st ans. My name is Vicente P. Gomez; 34 years old; and I reside in Monterey.

2nd ques. What office did you occupy under the former government, and how long did you occupy it?

2nd ans. I was a clerk in the secretary's office and was clerk in the treasury department. I was employed from the time of the arrival of Micheltorena until the time this country was taken by the Americans.

3rd ques. Are you acquainted with the Romeros? If so, state what you know in regard to their petitioning for a grant of lands in Contra Costa county.

3rd ans. I was acquainted with the Romeros. Mariano Romero was the overseer of my father's rancho. I know that Innocencio, José, and Mariano Romero solicited or petitioned the governor, Michel-
torena, for a grant of land in what is now called the Contra
176 Costa. I mean by grant of land a sobrante. The grant I did
not see, but I knew afterwards that it was issued, and I now know, through Mr. Lawrence, that the title or grant to which I refer has been lost. I saw about two weeks ago the petition at the surveyor general's office, and it is the same one that I refer to.

4th ques. Were the papers that you saw in the surveyor's office the whole of the papers, or was there in addition to that a copy of a grant or an order for the grant?

4th ans. There is wanting the order of "espidase el titulo," or that the title issue. I saw the papers in a hurry, and I cannot say exactly what other document was wanted besides the one I have mentioned.

5th ques. You stated that you knew that the title was issued. State the means of your knowledge?

5th ans. Because I used to take a note of the title that issued in the "*Toma de Razon.*"

6th ques. Did you take a note of this title?

6th ans. I do not remember distinctly, but I ought to have taken it.

7th ques. Did Micheltorena state to you that or not he had issued a title to the Romeros?

(Ques. objected to as leading.)

7th ans. That once a Romero solicited a grant of land from Michel-
torena, and I heard the governor ask if it was the same
177 Romero to whom he had already granted lands.

8th ques. What Romero was this who applied?

8th ans. This Romero was from Colinelo; he was not related to the Romeros, the claimants in this cause.

Cross-examination.

9th ques. You say you now know that the grant has been lost through Mr. Lawrence. Do you not mean to say only that you are informed by him that the title is lost?

9th ans. I mean that I was informed.

10th ques. You also say that you know the title issued to the Romeros in this case, and yet you say you never saw it. Do you not mean to say simply that you were informed that it had been issued?

10th ans. I do not mean "simply," as I was employed in the secretary's office, and I know that it was issued because I think I took the "*tomada razon.*"

11th ques. How can you know it unless you saw it?

11th ans. I know it because in the secretary's office everybody knew what took place, because there was so little to do.

12th ques. Was the "*toma de razon*" written by order of the governor, or did the clerk make it of his own notion?

12th ans. It was done by order of the governor, according to the
custom of the government and by the laws of the colonization.
178 13th ques. At what time was the "toma de razon" made?

13th ans. After the concession was made.

(Signed) VICENTE PERF'TO GOMEZ.

Sworn to and subscribed before me this 15th day of December, A. D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed Dec'r 26th, 1857.
J. EDGAR GRYMES, *Deputy Clerk.*

Deposition of Francisco Arce.

United States district court, northern district of California.

INNOCENCIO ROMERO *et al.*,
vs.
THE UNITED STATES.

SAN FRANCISCO, *December* 12*th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee, appointed by the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Francisco Arce, a witness produced on behalf
179 of the claimants in case No. 304, being an appeal from the
board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by John Hargons, a sworn interpreter.

Present: E. A. Lawrence, esq'r, for claimants, and E. W. F. Sloan, esq., for the United States.

Question by

1st ques. What is your name, age, and place of residence?

1st ans. My name is Francisco Arce; 35 years; and I reside in Monterey county.

2nd ques. What offices have you held under the former government of California?

2nd ans. I was first officer of the secretary under the former government, secretary interim of the same office. I held these offices during the years from April, 1839, until February, 1845.

3rd ques. Are you acquainted with the Romeros, claimants in this case, and when did you first become acquainted with them?

3rd ans. I know them, and first became acquainted with them in 1835 or 1836.

Ques. 4. Do you know of the Romeros petitioning for a grant of lands in Contra Costa county during the years 1843 or 1844?

180 Ans. 4. I remember that the Romeros were recommended to
me for the petition of the land they asked for. I myself made the petition out.

Ques. 5. Have you seen the original Spanish papers on file in surveyor's office in this case, and in whose handwriting are they?

Ans. 5. Yes, I have seen them, and they are in my handwriting; I mean the petition and the informe.

Ques. 6. Are the signatures of Jimeno and Micheltorena appearing upon those documents, their genuine signatures, and are you acquainted with their genuine signatures?

Ans. 6. Yes, sir; I am acquainted with the handwriting of Jimeno and Micheltorena, and their signatures on those documents are genuine.

Ques. 7. What action was had by the governor on the Romeros' petition?

Ans. 7. The governor submitted the petition to the information of the secretary, alcalde, &c.

Ques. 8. What was further done by the governor upon these "*informes?*"

Ans. 8. He decreed and ordered the title to be made.

Ques. 9. Do you recollect if the title was made out, and if so by whom?

Ans 9. I remember that the title was ordered to be made out by
the governor, and was done by one of the clerks of the
181 office. I do not remember whether it was Don Tomas Soberanes or Don Pedro Estrada who wrote it out.

Ques. 10. Did you see the grant, and was it delivered to the Romeros; if so by whom?

(Question objected to as leading.)

Ans. 10. I saw the title; it was signed by the governor and secretary, and it was delivered by me to Innocencio Romero.

Ques. 11. Do you recollect the contents of the grant? If so, state what they were.

(Question objected to on the ground that no foundation had been laid for parol evidence of the contents of the grant.)

Ans. 11. I recollect that the grant was made to the Romeros, as I have above stated, granting the sobrante of land in Contra Costa county, situated between the ranchos of Moraga, Pacheco, and Welch. The grant was made subject to the sobrante alone. I mean that the ranch embraced all the sobrante of those ranchos.

The petitioner was asked by the officials how many leagues he calculated the sobrante to be, and he answered that he had never surveyed it, but he thought that it contained four or five leagues.

Ques. 12th. In what form was the grant?

(Question objected to.)

Ans. 12th. It was in the usual legal form as all the others.

Ques. 13th. Were you familiar with the customary form of the grants?

Ans. 13th. Yes; I was.

182 Ques. 14th. How did you become so?

Ans. 14. Because I was employed, and it was my duty as an official.

Ques. 15. Do you know the date of this grant?

Ans. 15. I do not remember exactly: the title was drawn in 1844.

Ques. 16. Who were the grantees named in that title?

Ans. 16. Innocencio, José, and Mariano Romero—three brothers.

Ques. 17. By whom was the grant signed?

Ans. 17. By Micheltorena and Jimeno, sec'y.

Ques. 18. Were the signatures of Micheltorena and Jimeno to that grant genuine?

Ans. 18. They are genuine.

Ques. 19. Can you state whether that grant was made before or after the report of Manuel Jimeno, dated 23rd of March, 1844, and the order of Micheltorena of the same date, which appear in the expediente, and are now exhibited to you?

Ans. 19. I remember, that after the date of this order, "March 23rd, 1844," that there was an agreement made between Soto and *and* the petitioner, and the government gave the order that a title should be made in consequence of the agreement which they had made. The grant was made after this report and order dated March 23rd, 1844.

183 Ques. 20. Was the grant made before or after the agreement you speak of between the Romeros and Soto?

Ans. 20. After.

Ques. 21. Was that agreement between Soto and the Romeros in writing or verbal?

Ans. 21. Verbal, in the presence of the governor and the secretary.

Ques. 22. What Soto was it that you speak of?

Ans. 22. I refer to Francisco Soto, *alias* Cabo.

Ques. 23. Is Francisco Soto now living or dead?

Ans. 23. He is dead.

Ques. 24. When did he die?

Ans. 24. I do not remember.

Ques. 25 After this grant to the Romeros was made, what was done with it?

Ans. 25. It was delivered to the petitioner.

Ques. 26. Was this grant to the Romeros, that you say was in the ordinary form, a mere provisional or conditional concession, or was it a complete and absolute concession in ownership?

(Question objected to as leading.)

Ans. 26. It was a complete concession in good and legal terms.

Ques. 27. Have you ever seen that the grant since you delivered it to the Romeros?

Ans. 27. No, sir.

Ques. 28. Do you know where it is now?

Ans. 28. No, sir.

184 *Cross-examination.*

Ques. 29. Where were you when you drafted the petition for the grant of the land for the Romeros?

Ans. 29. In Monterey.

Ques. 30. At whose request did you draft it?

Ans. 30. At the request of Innocencio Romero, who was recommended to him by some friends.

Ques. 31. Who were the friends you allude to?

Ans. 31. Antonio Chavis—I do not remember the names of the others.

Ques. 32. Where did Chavis then live?

Ans. 32. In Monterey.

Ques. 33. To whom did you hand the draft of the petition when you completed it?

Ans. 33. To the petitioner.

Ques. 34. When did you next see it?

Ans. 34. I saw it several times at that time, and now lately I have seen it in the archives. I do not remember exactly when it was, but it was while the expediente was being formed.

Ques. 35. Where was it when you next saw it—in whose possession?

Ans. 35. I do not remember whether it was in my possession or the secretary's.

Ques. 36. Do you remember the order entered on the margin of the petition, dated the 18th of January, 1844?

Ans. 36. Yes, sir.

185 Ques. 37. Who wrote that order?

Ans. 37. It was written by Governor Micheltorena.

Ques. 38. Were you present when the order was written, or do you speak from your knowledge of his handwriting?

Ans. 38. I do not know whether I was present. I infer from the handwriting.

Ques. 39. Do you remember the report made by Manuel Jimeno, in obedience to said marginal order?

Ans. 39. I do not recollect. But I recollect it was asking information from the authorities.

Ques. 40. Do you remember the communication signed by Manuel Jimeno, in which he states the *the* governor decrees that the 1st alcalde of the town of San José report upon the petition?

Ans. 40. I remember that in the expediente there is a "informe" asked by the secretary, Man'l Jimeno, from the judge of San José.

Ques. 41. In whose handwriting is it?

Ans. 41. I do not remember in whose handwriting it is, but I think it was in mine.

Ques. 42. Do you speak from your present recollection of what occurred at that time, or from the knowledge of the handwriting you have recently seen in the expediente?

186 Ans. 42. I remember both ways on account of what occurred at the time, and from what I recollect from the expediente.

Ques. 43. Was there any report made by the judge of San José pursuant to that request? And if so, by whom?

(Question objected to on the ground that if there was any such report it must have been in writing: the writing must be produced or its absence accounted for.)

Ans. 43. It was done by the judge or alcalde at that time, who, according to my recollection, was Antonio Maria Pico.

Ques. 44. Do you remember when that report was received in Monterey?

Ans. 44. I do not remember.

Ques. 45. Have you any knowledge that it was ever received there except from the circumstance that you saw it in the expediente at that place?

Ans. 45. It was received in Monterey. I remember, by many circumstances at that time, that I saw it, and that I had it in my own hands.

Ques. 46. What did the governer first do in reference to the petition after receiving that report?

Ans. 46. He passed it over to the secretary.

Ques. 47. What did the secretary do with it?

Ans. 47. The secretary gave time for the Romeros and Soto
187 to have an agreement, in order to see whether they could settle
the question.

Ques. 48. Did he make an order to that effect in writing, or was it merely verbal?

Ans. 48. He gave me the order verbally.

Ques. 49. Did you write it?

Ans. 49. I do not recollect.

Ques. 50. Who was present at the time that Jimeno gave you that verbal order?

Ans. 50. I do not remember.

Ques. 51. Did you ever communicate that order to any one; if so, to whom, and when?

Ans. 51. I remember having spoken with the petitioner, stating to him that he required time for the agreement. I do not exactly remember the date, but it was one of those dates. I do not know whether it was in the first report or the one before the last.

Ques. 52. Where was it that you communicated that to the petitioner?

Ans. 52. In Monterey.

Ques. 53. How long after that was it before the governor decreed the grant to be made?

Ans. 53. I do not remember.

Ques. 54. Was 1, 2, 3, 4, 5, 6, 7, or 8 months?

Ans. 54. It might have been during that period, but I do not recollect when?

Ques. 55. Do you remember what season of the year was it?

Ans. 55. I do not recollect whether it was in spring, winter,
188 summer, or fall of the year.

Ques. 56. Do you remember whether it was in the year 1844, or 1845?

Ans. 56. I recollect that it was in 1844?

Ques. 57. From what circumstance do you recollect that it was in 1844?

Ans. 57. At that time, in 1844, I was contented, happy, and satisfied, and that is the reason that I recollect it.

Ques. 58. Did that happy state of contentment continue during the entire year of 1844?

(Question objected to as irrevelant.)

Ans. 58. I had different epochs at that time, but I believe I enjoyed it the whole year.

Ques. 59. Were you personally present when Francisco Soto and the petitioner announced to the governor that they had come to an agreement?

Ans. 59. Yes.

Ques. 60 When and where did that take place?

Ans. 60. This took place some days after that in the private residence of the governor. They had an agreement made between Soto and the petitioner. I do not recollect in what month it was, whether July, August, September, or October, 1844. They came backwards and forwards several times before the agreement was made.

Ques. 61. Please name all the parties that were present before the governor at that time.

189 Ans. 61. The parties, Soto, Innocentio, Romero, Jimeno, sec'y, and myself; I do not remember the others.

Ques. 62. Was there no note of that agreement written down by any of those officials on that occasion?

Ans. 62. I do not remember whether there was anything written, but I only recollect the verbal agreement in which Soto desisted from his claim.

Ques. 63. To what extent did Soto desist or yield his claim?

Ans. 63. The claim of Soto was nothing but a mere superficial claim of little value, in consequence, according to my way of thinking, that there was no demand or representation on the Soto's part to obtain the right of the land. Soto yielded his claim and the governor ordered that the title should be issued.

Ques. 64 At what time did the governor order that?

Ans. 64. I do not recollect.

Ques. 65. Did he make it on the same day that Soto yielded his claim, or on a subsequent day?

Ans. 65. I do not remember.

Ques. 66. Were you present when the governor made that order?

Ans. 66. I do not remember.

Ques. 67. When did you first see that order, and where?

(Question objected to on the ground that it assumes that the
190 order was made in writing.)

Ans. 67. I have said several times before that it was made at the governor's; the time and date I do not remember.

Ques. 68. When and where did you first see the order which you have said the governor made directing a title to be given?

(Question objected to on the same ground as the last.)

Ans. 68. With respect to that, I do not recollect; the order was received by the secretary, given by the governor.

Ques. 69. How do you know that the governor made the order and that the secretary received it?

Ans. 69. Because I knew afterwards that the governor had given it, and that the secretary never did anything except with special orders from the governor. The secretary gave me the order to draw the title; it was done so; it was signed by the governor and the secretary, and delivered to the petitioner.

Ques. 70. Was the title then drawn by you and in your handwriting?

Ans. 70. I have already said that it was in the handwriting of one of the officials; it was not written by me.

Ques. 71. Did you see it written?

Ans. 71. Yes.

Ques. 72. Name the clerk who wrote it?

Ans. 72. I do not remember; I have already said that it was

191 either Tomas Soberanes or Pedro Estrada, but I do not recollect which of the two.

Ques. 73. In whose office was it written?

Ans. 73. In the government office; in the office of dispatch.

Ques. 74. Did you see the governor sign it?

Ans. 74. Yes, sir.

Ques. 75. Did you see Jimeno, the secretary, sign it?

Ans. 75. Yes, sir.

Ques. 76. Did you see it delivered?

Ans. 76. Yes.

Ques. 77. Was all that done on the same day?

Ans. 77. I do not remember, but I think not, for I was busy in those days in the sec'y's office.

Ques. 78. Was there a copy of that grant attached to the expediente?

Ans. 78. I do not remember.

Ques. 79. Was the order of the governor, directing the title to issue, ever reduced to writing and attached to the expediente?

Ans. 79. I think so.

Ques. 80. Do you think so because you remember that it was so, or have you no recollection about it?

Ans. 80. I cannot recollect so many things; I am no encyclopedia, and my head does not contain all the events that happened 15 or 20 years ago; but I think that it was attached to the expediente.

Ques. 81. You state in your direct examination that you have recently examined the expediente on file in this case in the
192 office of the surveyor general; state whether it is the same
expediente which you first saw in the archives at Monterey?

Ans. 81. Yes, sir; it is the same expediente.

Ques. 82. Was it not customary for the governor, when he thought to accede to a petition for land to enter a decree of concession, or cause it to be done, usually commencing with the words "vista la petition;" and if so, state whether such a decree was entered in this case?

Ans. 82. In these cases the secretary was responsible, and he was the person to do it or not, and that this circumstance exist in some expediente and not in others. It was done so in some cases and in some cases it was not, according to circumstances, as the governor had the power and he acted or not as he pleased.

Ques. 83. Do you mean to say that the instances of omitting to enter that decree was so numerous as to preclude you from saying that there was no general custom on the subject?

Ans. 83. Sometimes it was omitted by the clerks, sometimes by the secretary, and the governor did just as he pleased. It was not considered necessary.

Ques. 84. Was there any "vista la peticion" or decree of concession made in writing in this case?

Ans. 84. I do not recollect; I believe not.

Ques. 85. Was it customary while you occupied the offices
193 you have mentioned in your direct examination to retain in the
expediente copy of the titulo issued by the governor?

Ans. 85. Yes, sir; it was customary.

Ques. 86. Was there any copy retained in this case?

Ans. 86. I do not remember.

Ques. 87. Did Francisco Soto return from Monterey in company with Innocencio Romero at the time he got the grant?

Ans. 87. He returned, but I do not remember if they went together.

Ques. 88. Where did Soto live at that time?

Ans. 88. He lived in the district of San José. I cannot state exactly where he lived—somewhere in San José, on his ranch.

Ques. 89. Do you know whether the ranch on which he sometimes lived at that time was the same tract of land which you say the governor granted to the Romeros?

Ans. 89. I believe not.

Ques. 90. When you speak of Soto living on his ranch what ranch do you refer to?

Ans. 90. I refer to the San Lorenzo ranch, the property of his widow

Ques. 91. Do you know the extent of the San Lorenzo ranch?

Ans. 91. I do not remember.

Ques. 92. Was the ranch which you say was granted to the Romeros called by a particular name; if so, state the name.

Ans. 92. I do not remember.

194 Ques. 93. Do you know whether it is identical with the ranch which you have just called San Lorenzo?

Ans. 93. No, sir.

Ques. 94. What ranch was it which you say Francisco Soto yielded his claim to in favor of the Romeros?

Ans. 94. I refer to the sobrante lying between the Morega, Pacheco, and Welch.

Ques. 95. Was there any recital in the titulo which you say the governor gave to the Romeros of the agreement between them and Soto, by which the latter yielded up his claim to the sobrante?

Ans. 95. I do not remember.

Ques. 96. How can you remember that the titulo was in the usual form if you cannot remember that circumstance?

Ans. 96. Some things I recollect, others I do not. I had the title in my hands, and read that the title was in the sobrante.

Ques. 97. Repeat the language of the grant, if you can, descriptive of the boundaries of the land granted?

Ans. 97. I remember that they asked for the sobrante between the ranchos of Morega, Welch, and Pacheco. I am not able to give the boundaries, because I do not remember them.

Ques. 98. Where did Innocencio Romero live during the years 1853 and 1854?

98th ans. I do not know.

Ques. 99. When did you see him last?

195 Ans. 99. I do not remember the date.

Ques. 100. How many of the following persons, and which of them, do you, and how long have you known them, to wit: Francisco Altoyo, Alvin C. Campbell, Jas. W. Thompson, William H. Mitchell, John M. Jones, C. Yeager, Miguel Garcia, and José Romero?

Ans. 100. I know Campbell, Garcia, and José Romero. I know Campbell since 1851, José Romero since the year 1836 or 1837; Miguel Garcia since 1844 or 1844.

Ques. 101. Has either one of those men, at any time since 1852, asked you any questions touching your knowledge of the matters testified by you?

Ans. 101. I do not remember.

Ques. 102. Has Innocencio Romero done so at any time since 1852?

Ans. 102. I do not remember.

Ques. 103. Who spoke to you concerning your knowledge of this case, and when?

Ans. 103. In the first place Mr. E. A. Lawrence, Mr. Smith, Mr. Tice. Mr. Tice about a month; Mr. Smith longer, both of whom are present.

Ques. 104. What did Mr. Smith or Mr. Tice tell you about it?

Ans. 104. These gentlemen begged to come forward and say what was true and just about the case, that I knew.

Ques. 105. How did they ascertain that you knew anything about it?

196 Ans. 105. I do not know.

Ques. 106. Where were you when they made that application?

Ans. 106. Mr. Tice met me in the street, and I was introduced to him by Mr. Lawrence.

Ques. 107. Did you then tell them that you knew anything about it?

Ans. 107. They asked me, and I said that I knew something about it.

Ques. 108. How long before that was it that you met Mr. Lawrence?

Ans. 108. Mr. Lawrence wrote me a letter over a month ago, wishing me to come down here for the purpose of serving him in this case, for he knew that he was acquainted with, and he wished him to state what was true and correct in the matter according to his knowledge.

Ques. 109. Did you ever communicate with Mr. Lawrence before receiving this letter in any way?

Ans. 109. No, sir.

Ques. 110. Were you in company with Mr. Lawrence in the office of the surveyor general about two months ago, looking at the expediente you have mentioned, and conversing with him about this claim?

Ans. 110. Yes, sir.

Ques. 111. Did Mr. Lawrence at that time state to you that any of the title papers had been lost?

Ans. 111. I do not remember.

197 Ques. 112. Has any one at any time stated to you that some of the title papers had been lost?

Ans. 112. I do not remember.

Direct resumed.

Ques. 113. Had you received the letter from Mr. Lawrence before or after you was with him in the office of the surveyor general?

Ans. 113. I received the letter previously.

Ques. 114. You have been questioned on the cross-examination about the handwriting on the expediente in this case. Was the original expediente before you when you answered, or did you answer from the recollection of it?

Ans. 114. It is from memory.

Ques. 115. After the Americans took possession of California, were the archives at Monterey kept with much care?

Ans. 116. I believe not.

Ques. 117. Do you know whether any original papers belonging to the archives and relating to land titled have been lost?

Ans. 117. I know that great many documents have been mislaid.

Ques. 118. Who was the owner of the San Lorenzo ranch—to whom was it granted?

Ans. 118. William Castro and Francisco Soto.

(Signed) FRAN'CO. ARCE.

Sworn to and subscribed before me this 12th day of December, 1857.

J. EDGAR GRYMES,
Special Com'r.

198 Endorsed: Filed Dec'r 26, 1857.

J. EDGAR GRYMES,
Deputy Clerk.

Deposition of Charles B. Strode.

United States district court, northern district of California.

INNOCENCIO ROMERO *et al.*
vs.
THE UNITED STATES.

SAN FRANCISCO, *December 17th,* 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the dist. court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Charles B. Strode, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: E. A. Lawrence, esq'r., for the claimants; U. S.
199 att'y, and E. W. F. Sloan, esq'r., for the United States.

Questions by E. A. Lawrence, esq'r.

Ques. 1. What is your name, age, and place of residence?

Ans. My name is Charles B. Strode; 40 years old, and I reside in Oakland, Contra Costa county.

Ques. 2. How long have you been a practicing attorney in this city, and what has been your principal business?

Ans Since the last of November, 1850, the prosecution of Mexican and Spanish land claims before the U. S. land commission, and in some cases before the U. S. courts, in connection first with Wm. Carey Jones, afterwards with P. W. Tompkins, of the firm of Jones, Tompkins & Strode, and since by myself.

Ques. 3. Have you ever seen the title papers of the Romeros to lands in Contra Costa county? If so, state when and where and under what circumstances, and what you know about them.

Ans. I have seen what I supposed were the title papers. In the
last of 1850 or the first of 1851 I became acquainted in the
200 city of San José with Mr. Sanford, who was a lawyer. In
1851 or 1852, my mind not being distinct, I met with Mr.
Sanford in Benecia. I found him to be deranged, as I thought, certainly very flighty, in consequence of domestic troubles. He had been to my house, in this city, and I had afforded small pecuniary means. He took me to his office, in Benicia, and told me he had the Romero grant in his possession. I know the situation of the land by general description and by having been often on it. The paper that I saw was for a grant of a sobrante. I was the lawyer of several of the colidantes and expected to be that of others, which made me feel an interest in the examination of this paper. At that time I had learned to read the Spanish language, although very imperfectly, and both for convenience and certainty always used an interpreter. I had become very familiar with the appearance of Spanish and Mexican grants, and knew, as far as I could know by comparison with others, the handwriting of Jimeno and Micheltoreno, and could not, I think, have been deceived as to their genuineness of their signatures, altho' I never saw either of them write. I know that the signature of Micheltorena was to the papers, and I believe also that of Jimeno. I have examined the papers in this case, now on file in the surveyor general's office. They are not the papers shown me by
Mr. Sanford. My interpreter, who, I believe, was Gutierrez,
201 said now to be in Cuba, read the papers carefully to me. They
consisted of a good many papers sewn together on the back.
It purported to be a full grant for land lying between the claims of Moraga, Welch, Pacheco and others, and was for a sobrante described to be of four or five leagues—I believe five—and was a grant in full title given to two or three brothers named Romero. This paper was offered me by Mr. Sanford, who told me he had gotten them in San José on a trial of ejectment in a suit between one of the Peraltas and a purchaser under the Romeros. He told me that he did not believe that the parties in interest knew where the papers were; that he, Sanford, intended to go to his family in Georgia, and that he was willing to give me the papers to see what I could do with them for him and myself. This I refused to do and left the papers in his office, in either a chest or a trunk. Afterwards Sanford left this State for the Atlantic States, and I have since heard that he is dead. Some months after this, and on the land that it purported to grant, I met with a gentleman who was a purchaser under that grant, named Yager, and told him where I had seen those papers. Sanford, at that time, as we understood, was in the mines. Yager informed me that he would start in a few days to find Sanford. I do not know, of my own

202 knowledge, whether he saw him or not. From every appearance Sanford was in great pecuniary embarrassment. Having learned that all his furniture, including the trunk or chest in which I saw the papers, had been attached and sold for debt, I went to Benecia, at the request of the parties in interest, and made a diligent search for them, and although I heard from others where the trunk or chest had been seen after the departure of Sanford, I was unable to find where they are at present. I do not know where those papers are, and except from the statements of Sanford and other lawyers who were engaged in the ejectment suit in San José, how he ever got possession of them. Before the departure of Mr. Sanford he told me that he had left them in the same place where I had seen them.

Cross-examination.

Ques. 4. State as nearly as you can from memory the respective documents of which the supposed title papers consisted, and which you saw in Mr. Sanford's possession.

Ans. They consisted of a petition signed by the applicants, of a marginal decree by the governor, with the usual informe, with the report of the secretary, I believe, with a rude map. I have
302 seen a map, and I think that was the time, connected with those papers, and a final decree or concession, and do not remember that the same differed from the usual form of making grants in property. I believe it had the ordinary conditions, and was dated, as well as I can remember, in 1844.

There was no peculiarity that now strikes my mind about those papers. What I mean by decree of concession is that document usually commencing with "vista la peticion" and followed by a grant in form.

(Signed) C. B. STRODE.

Sworn to and subscribed before me this 17th day of December, 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed Dec'r 26th, 1857.

J. EDGAR GRYMES, *Deputy.*

Deposition of Inocencio Romero.

204 United States district court, northern district of California.

Inocencio Romero *et al.*
vs.
The United States.

San Francisco, *December* 18*th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Inocencio Romero, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by John Argas, a sworn interpreter.

Present: E. A. Lawrence, esq., for claimants; E. W. F. Sloan for the United States.

Questions by claimants' counsel.

Ques. 1. What is your name, age, and place of residence?

205 Ans. My name is Inocencio Romero; 52 years; and my place of residence is beyond San Francisquito.

Ques. 2. Are you the same person who has been heretofore examined in this case?

Ans. Yes, sir.

Ques. 3. Do you recollect of Soto petitioning for the same land as yourself; if so, was the difference between you and him settled before you obtained your grant, and how was it settled?

(Question is objected to as leading, all except the last four words.)

Ans. I recollect that Soto made a petition for the same land as I did. The difference was settled before I obtained my grant. Soto and myself were called in the presence of Micheltorena, and as Soto was already in possession of the rancho San Lorenzo, and as he had petitioned also for the Juntas, Micheltorena told him that he should have the San Lorenzo, and in that case he would grant the Juntas to the Romeros, and this was the way the difference was settled, both being satisfied with the governor's decision.

Ques. 4. Did you ever petitioned John Burton, alcalde at San José, for a grant of this ranch after the Americans came to this country?

Ans. No, sir.

206 Ques. 5. Did you ever petition John Burton, the alcalde in San José, for a survey of the land, in order that it might be granted to you; if nay, what did you petition for?

(Question objected to.)

Ans. No, sir; I did not petition Burton for a survey of the land, because the land had already been granted to me by Micheltorena. I petitioned Burton to settle the difficulty with Domingo Peralta about boundaries.

Cross-examination.

Ques. 6. Was your petition to Burton, the alcalde, in writing?

Ans. It was in writing.

(The counsel for the U. S. objects to all what the witness testified concerning what he said about petitioning Burton, as the paper would speak for itself.)

Ques. 7. Are you interested, directly or indirectly, in this claim?

Ans. No, sir.

Ques. 8. Are you not one of the claimants in this case?

Ans. Yes, sir.

207 Ques. 9. Were you not interested then when the claim was presented to the board of commissioners?

Ans. Yes, sir, at the beginning I had an interest, but I sold my interest 3 years ago.

Ques. 10. You testified in your former deposition that you handed your title papers to a lawyer who was an American, by the name of Tingley or Hinckley, to present the same for confirmation; did you ever see them afterwards?

Ans. I never saw the papers afterwards.

Ques. 11. Were you present in San José at the trial of a cause in which Domingo Peralta was on one side and yourself and Garcia on the other, in reference to this tract of land or a part of it?

Ans. I was not there myself. I was at that time sick, and as Garcia was in partnership with me he went.

Ques. 12. Was it before or after that trial that you handed your title papers to Tingley?

Ans. It appears to me that it was before.

208 Ques. 13. What did the title papers so handed to Tingley consist of?

Ans. The papers I gave him consisted of the title papers pertaining to the grant given to me by the governor.

Ques. 14. What title papers were given to you by the governor?

Ans. After I made the petition I got the title papers with all the different papers usually issued at the government office. I cannot describe the number of papers.

Ques. 15. Were there several papers; if so, how many?

Ans. There were several papers, such as the map, petition, informe, and decrees.

Ques. 16. Did Soto go with you to Monterey at the time you got your papers?

Ans. We did not go together. Soto went on his own business and I went on mine.

Ques. 17. Did you and Soto come away together from Monterey?

Ans. No, sir.

Ques. 18. Where did Soto live at that time?

Ans. At San Lorenzo.

209 Ques. 19. How long after you had presented your petition was it that Romero and Soto were ordered before the governor, as mentioned by you in your direct examination?

Ans. I do not recollect, but it was soon afterwards; perhaps some months afterwards.

Ques. 20. In what month was it that you say you obtained that grant? State the time as nearly as possible.

Ans. I cannot say exactly, but I think it was in March.

Direct examination resumed.

Ques. 21. Was it before or after the governor ordered you and Soto before him that the grant was made?

Ans. It was after.

Ques. 22. Can you and your brothers either read or write?

Ans. No.

Ques. 23. Did you hand the title papers to Tingley in person or did you send them to him? If so, by whom?

210 Ans. I was sick at the time and sent them to him by negro Garcia. The papers were loose, without being sewn together. I do not know whether the lawyer sewed the papers together or not.

his
INOCENCIO + ROMERO.
rubric.

Sworn to and subscribed his rubric this 18th day of December, A. D. 1857, before me,

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed Dec'r 26th, 1857.

J. EDGAR GRYMES,
Deputy Clerk.

Deposition of José Antonio Chavis.

United States district court, northern district of California.

INOCENCIO ROMERO *et al.*
vs.
THE UNITED STATES.

SAN FRANCISCO, *December 14th*, 1857.

211 On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the dist. court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came José Antonio Chavis, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by John Argas, a sworn interpreter:

Present: W. F. L. Sloan, esq., for the United States, and E. A. Lawrence for claimants.

Questions by claimants' counsel.

Ques. 1. What is your name, age, and place of residence?

Ans. My name is José Antonio Chavis; 36 years old, and I reside on the frontier of lower California.

Ques. 2. Did you hold any office under Micheltorena; if so, what, and during what period?

Ans. I was secretary of the ayuntamiento in 1844.

212 Ques. 3. Were you acquainted with Inocencio, José, and Mariano Romero during that time, and do you know of their applying for a grant; if so, what occurred?

Ans. I know them; I know that they made an application for a grant; I was intimately acquainted with the Romeros; Inocencio came and called at my house to request me to assist him in his case, and then I went myself to the office of the government, where Francisco Arce was acting there as "official primero," and I recommended him to said Arce in the presence of Romero, in order that Arce should assist Romero in carrying his petition through.

Some time afterwards Romero came to my house to thank me for the favor I had conferred on him, showing me at the same time the title of the land which he had petitioned for, which grant I looked over and told him it was perfectly good.

Ques. 4. State the form, date and contents of the grant, and by whom signed.

Ans. The grant was signed by Gen'l Micheltorena as governor; I do not recollect the date; Jimeno, acting as secretary, signed it. The land granted is situated in Contra Costa; it was for all the sobrante lying between the ranchos of Moraga, Pacheco, Welch, and others
whose names I do not recollect. I heard Mr. Romero say that
213 it would contain four or five leagues. I do not remember ex-
actly the form of the title, it being so long ago since I saw it,
but I remember the substance of it as above stated.

Ques. 5. Were you acquainted with the signatures of Micheltorena and Jimeno, and were their signatures genuine to that title?

Ans. I was acquainted with their signatures, and they were genuine.

Ques. 6. Was it an absolute grant, or a provisional grant?

Ans. It was an absolute grant.

Ques. 7. Was it in the usual form, or a marginal decree?

Ans. In the usual form.

Ques. 8. What year was it dated?

Ans. In 1844.

Cross-examination.

Ques. 9. Of what "ayuntamiento" were you secretary?

Ans. Of Monterey.

214 Ques. 10. Did your office of secretary of the ayuntamiento
make you familiar with the proceedings of the territorial government?

Ans. No, sir.

Ques. 11. Did you ever see the expediente in this case either in Monterey or in the office of the surveyor general?

Ans. I saw it here in this office—I mean a copy; I saw the original in Monterey in 1844.

Ques. 12. Did you see it there before or after the issuing of the titulo, as above mentioned?

Ans. After.

Ques. 13. Did you examine it with sufficient care to enable you to recognize the document you saw in this room as a copy?

Ans. Yes, sir.

Ques. 14. Please describe, step by step, the documents of which it was composed.

Ans. I cannot exactly tell one by one the documents which composed the expediente; it began first with the petition, and then following the different "informes" of the alcalde from there to the secretary, and from the secretary to the governor, and to the grant.

215 Ques. 15. Can you remember how often it was referred to the alcalde for information?

Ans. No, sir.

Ques. 16. Do you remember the report of the alcalde made upon the first reference?

(Objected to as seeking to prove by parol the contents of a written instrument.)

Ans. I do remember; but I suppose it must have been favorable to Romero, as the title was afterwards granted.

Ques. 17. Did that expediente contain a decree of concession or order directing a "titulo" to issue?

Ans. 17. Yes, sir.

Ques. 18. Did the expediente contain a copy of the grant?

Ans. Yes, sir.

Ques. 19. You say in you direct examination that Inocencio Romero exhibited to you his titulo after he obtained it; did you speak of the one retained in the expediente or the one which was handed to him for his private convenience?

Ans. It was the original—the one which was in the expediente.

216 Ques. 20. Did you examine the copy of the expediente shown you in this office recently?

Ans. Yes, sir, four or five days ago.

Ques. 21. Did you find it to be a correct copy?

Ans. 21. Yes, sir.

Ques. 22. Did you find the copy complete?

Ans. Yes, sir.

Ques. 23. Have you ever heard Inocencio Romero, or any of the other claimants in this case, speak of having lost the original titulo?

Ans. I have been a long time absent from California. I have not heard anything nor seen him for a long time.

Ques. 24. At whose request did you appear as a witness?

Ans. The first one who spoke to me about this case was Perfecto Vicente Gomez, and afterwards Mr. E. A. Lawrence.

Ques. 25. Did Mr. Lawrence say anything to you about the original titulo being lost?

Ans. No, sir.

217 *Direct resumed.*

Ques. 26. You stated in your answer 22nd that you found the copy of the expediente on file in this case complete; examine the copy of said expediente in the transcript from the land commission now shown you, and state whether you find in it the copy of the grant alluded to; and is it not in that respect incomplete?

(The last clause of the question is objected to as leading.)

Ans. The witness says that he now recollects that he enquired from Mr. Hargous, who saw the copy of the papers with him, about the grant, and asked where was the grant, and he now recollects that they could not find it.

The transcript being now shown to the witness, he is asked whether he can find a copy of the original grant, and, after searching, says that he cannot find it.

Ques. 27. The examination that you speak of as having been made, was it a careful or a hurried examination; and was it by yourself or with the interpreter, Mr. Hargous?

Ans. I made the examination somewhat in a hurry with an interpreter.

218 *Cross-examination resumed.*

Ques. 28. Do you find on your present examination you find the copy complete, except the absence of the titulo?

Ans. Yes, sir.

(Signed) JOSÉ A. CHAVIS.

Sworn to and subscribed before me this 14th day of December, A. D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed Dec'r 26, 1857.

J. EDGAR GRYMES,
Deputy Clerk.

Deposition of Francisco Atoya.

United States district court, northern district of California.

Inocencio Romero *et al.*
vs.
The United States.

San Francisco, *December 22d*, 1857.

219 On this day, before J. Edgar Grymes, a special commissioner and referee, appointed by the dist. court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Francisco Atoya and John W. Kotlinger, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: E. A. Lawrence, for claimants, and E. W. F. Sloan, representing the U. S. dist. att'y.

Questions by claimants' counsel.

Ques. 1. What is your name, age, and place of residence?

Ans. My name is Francisco Atoya; 35 years old, and I reside at Alamo, Contra Costa county.

Ques. 2. Did you ever have the title papers of the Romeros in your possession; if so, did you ever have them examined; if yea, by whom, and for what purpose, and at what time?

Ans. No, sir; I never had them in my possession, but had 220 them examined Mr. Tingley and another person, whose name I do not remember; this was in 1850. The purpose of having them examined was for the purpose of buying an interest in the claim.

Ques. 3. State what transpired upon the examination of those papers?

Ans. The papers were found to be good by their examination of them by Mr. Fingley and, ~~I believe, Mr.~~ Redmond, ~~and also~~ by an old gentleman, who was a good Spanish schoolar, whom I believe to be Col. Jones, who said that it was a very common way that Mexicans had to give a grants for a sobrânte or surplus. Mr. Tingley had doubts whether the grant would stand, because it was for a sobrante; but Col. Jones satisfied him as to the validity of sobrante grants, by stating that it was a very common way in Mexico of making such grants.

(Counsel for the U. S. object to the whole of this testimony as incompetent.)

Cross-examination.

Ques. 4. Did you make the purchase for part of the land?

Ans. Yes, sir, but I do not hold it still; I sold it to Mr. 221 Smith and others in 1853.

(Signed) FRANCISCO ATOYA.

Sworn to and subscribed before me this 22nd day of December, 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed Dec'r 26th, 1857.

J. EDGAR GRYMES, *Dep. Cl'k.*

Deposition of John W. Kotlinger.

John W. Kotlinger, being duly sworn, deposes and says in answer to the questions propounded to him:

Ques. 1. What is your name, age, and place of residence?

Ans. My name is John W. Kotlinger, 37 years of age, and I reside in this city.

Ques. 2. Where did you reside in 1850, and what was your business then?

Ans. I reside in 1850 in the pueblo of San José; my business was interpreting and translating up to the month of May, about which time I was admitted as a member of the bar.

Ques. 3. Do you recollect anything about the suit between Domingo Peralta on the one side, and Romero and Garcia, on the other, in 1850? If so, state what you recollect in regard to it.

222 Ans. I recollect there was a suit pending in the district court of the 3rd judicial district between Domingo Peralta and Romero and Garcia about some lands in Contra Costa county. Whether said

219

suit was in 1850 or 1851, I cannot state certainly. I lived in San José until the latter end of 1851, attending to law business, at which time I left San José.

I recollect that I was employed in that suit in which Col. Sanford was counsel for Peralta. I was employed to make certain translations of Spanish documents to be used on the trial by Col. Sanford.

Ques. 4. Do you recollect of Domingo Peralta coming there and preparing for the trial? If so, state what occurred at that time.

Ans. I recollect having seen Domingo Peralta at least twice in Mr. Sanford's office. I was doing the interpreting for Mr. Sanford, and have some recollection regarding the matters regarding the conversation between Peralta and Sanford. The conversation of Peralta was regarding his law suit between himself and Romero and Garcia. So far as I can recollect, Peralta did not appear to deny that the 223 Romeros had a title to certain lands which he disputed against them; but he, Peralta, seemed to think that his title covered the lands in dispute.

As far as my recollection serves me, I think that Peralta stated that the Romeros got their title to the lands which he claimed because the governor did not know that the land had already been granted.

(Counsel for the U. S. objects to all that part of the answer which details the statement of Domingo Peralta.)

Ques. 5. Do you know what became of the title papers of the Romeros after that trial?

Ans. No, sir; I think that I translated myself, in court, the title papers of the contending parties; but I am not positive about it, because I was frequently employed then in translating Spanish documents, and I might easily be mistaken about these papers and others that I translated.

Cross-examination.

Ques. 6. Can you state positively that you ever did see the title papers of the Romeros?

224 Ans. No, sir, I could not. I think I translated them verbally.

(Signed) JOHN W. KOTLINGER.

Sworn to and subscribed before me this 22nd day of December, A. D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed Dec'r 26th, 1857.

J. EDGAR GRYMES,
Deputy Clerk.

Dep. of John Argos.

United States district court, northern district of California.

INOCENCO ROMERO *et al.*
vs.
THE UNITED STATES.

SAN FRANCISCO, *December 26th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the dist. court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came John Argos, a witness produced on behalf of 225 the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present: U. S. dist. att'y and E. A. Lawrence, esq., for claimants.

Question by

Ques. 1. What is your name, age, and place of residence?

Ans. My name is John Argos; 39 years old, and I reside in this city.

Ques. 2. What is your native tongue?

Ans. The Spanish language.

Ques. 3. Do you act as interpreter for the Mexican or Spanish people often?

Ans. Yes, sir, frequently—most every day.

Ques. 4. Are you familiar with the English language?

Ans. Yes, sir.

Ques. 5. Are you in the habit of translating from the Spanish 226 into English; if yea, look at the translations hereto annexed, marked "A," "B" and "C," and say whether they were made by yourself; if yea, are they correct translations of the documents which they purport to translate?

Ans. I am in the habit of making translations from the Spanish into the English. Said translations, marked "A," "B" and "C," were made by myself, and they are correct translations of the original documents, which I have seen in the surveyor general's office.

Ques. 6. Look at the translation, (exhibit "A,") and state wherein that translation from line 22 to line 28 differs from the translation now on file, and which of them is the correct translation?

Ans. 6. There is a difference in the translation, on account of my looking over the original document, and I think my translation is the correct one.

The words "se nos podia agriciar," referring to the past tense, and meaning "should be granted to us," instead of "can be granted to us."

Ques. 7. Does the last clause "se nos podia agricia," mean that the land might at that time, (1847,) be granted, or does it refer to the

contents of the papers made by the alcalde in 1844, and being
227 merely words of description of those orders?

Ans. It refers to the papers of 1844, and, as I have already said, they are in the past tense.

Ques. 8. State the character of the language of the documents you have translated.

Ans. I have found it to be in great many parts incorrect, and improper phrases used in others.

Ques. 9. State anything further which you discerned peculiar to those papers.

Ans. Faults in spelling, and some in grammar. It is difficult to make out the meaning.

Ques. 10. Look at lines 12 to 15 of Exhibit "C," page 4, hereto annexed, and state whether the original meaning in Spanish of that sentence is subject to the lands being granted by the Mexican government, or refers to the acknowledgment of the title by the then existing provisional government.

Ans. It refers to the acknowledgment of the title by the administration at that time, (1847.) It is very obscurely explained, but I
think it means and has reference to the confirmation of the
228 titles by the American courts.

(Signed) J. ARGOS.

Sworn to and subscribed before me this 26th day of December, A. D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

Exhibit A.

Translation of Exhibit No. 3, A. F., annexed to deposition of Antonio Maria Pico, on page 27 of transcript from the land commission.

To the Constitutional Alcalde:

The subscriber of this humble representation has the honor to apply to you, founded on the right of petition, which the law grants to every citizen, and as likewise his excellency the governor of this department recognizes in his proclamation, that every citizen be justly attended in his petition and claims.

As early as the year '44 there was sent an order from the former government to this justice's court that a survey should be made of the lands called "Juntos," which we asked for jointly, (I and my brother Inocentio Romero,) after the previous citation of the adjoining land owners, which at the present time has not been fulfilled.

229 What we ask of you, as the first magistrate of this district,
is, to have an information made, or that a testimonial be given to us by the alcalde, who was such in the year '44, of the reports which were passed to the government, that "se podia agracias," that said lands should be granted to us.

Wherefore we pray you to be pleased to provide charitably in favor of the claimant.

Pueblo de San José Guadalupe.

EXHIBIT B.

Translation of Exhibit No. 5 to the deposition of A. M. Pico, page 31 of the transcript from the land commission.

Señor Justice of the Peace of the Pueblo of San José de Guadalupe:

José Romero, with due respect, represents before you that there are some years since I solicited a tract of land in the cañada de San Ramon, and bordering upon the land belonging to Mariano Castro, taking the sobrante of which the title deed of Mr. Castro (which are two leagues) speaks, and thence bordering with the land of the deceased Welch on the north.

Señor Justice, his excellency the governor, declared that the lands of Señor Castro should be surveyed, and that possession of the sobrante should be given to us; but this has never been complied with for want of an opportunity to do so. The papers to show this
230 order ought to be in the justice's court of this pueblo.

Sir, I humbly represent to you that we are two brothers, with a numerous family, and some stock, and without a piece of land to raise them on; in view of which we beg "de ver por los interdados" of you to do justice for the interested parties as soon as it can possibly be done, in order that we may be able to settle and put on our stock.

Wherefore I humbly beg you to provide, as I have petitioned, which is a favor I expect of you.

JOSE + ROMERO.
Cruz.
INOCENTIO + ROMERO.

Pueblo of San José, 31 March, 1847.

EXHIBIT C.

Translation of deed from José Romero to Garcia, page — of the transcript.

In the pueblo of San José de Guadalupe, in Upper California, on the 15th day of January, in the year one thousand four hundred and forty-seven, before Juan Burton and the present witnesses, Don Guillermo Castro, Don Pedro Davis, and Don José Fernandez, appeared José Romero and Francisco Garcia; and the first said
231 that he made a donation of half of the land he solicited jointly with Inocentio Romero to said Garcia for the consideration of sixty dollars, which he has received; and that in future the heirs of José Romero may not have any cause of action to said part of said land, José Romero, his wife, Maria Garcia, and the said witnesses subscribed hereunto; both parties being subject to that, if the government grants it in full property; and if the contrary, Garcia will loose equally with Romero, without having any cause of action to reclaim the money given him.

In witnes swhereof, I subscribe officially, in order that this deed may be valid.

JOHN BURTON, *Alcalde.*

Jose Romero, +.
Maria Garcia, +.

In witness:
Jose Fernandez.
Pedro Davis.

Endorsed: Filed Dec'r 26th, 1857.

J. EDGAR GRYMES, *Deputy.*

Deed—José Romero to Francis P. Wilkes.

233 This indenture, made the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and forty-nine, between José Romero, of the Pueblo de San José, of the first part, and Francis P. Wilkes of the same place, of the second part, witnesseth: That said party of the first part, in consideration of the sum of one hundred dollars in hand duly paid, hath sold, and by these presents doth grant and convey unto the said party of the second part, his heirs and assigns forever, all that certain piece or parcel of land lying and being in the jurisdiction of the Pueblo de San José, on the north side of the bay, in the valley of San Roman, joining the farm of the Pachecos, being an equal undivided eighth part of a ranch granted by Micheltorena, then governor of California, to said José Romero and Innocentia Romero, together with all and singular the rights, privileges, and appurtenances thereunto belonging, or in anywise appertaining; to have and to hold the same unto the said party of the second part, his heirs and assigns, forever.

And the said party of the first part, for himself, his heirs, administrators and assigns, doth covenant and agree that at delivery hereof he is the lawful owner of the premises above granted, and seized of a good and indefeasible estate of inheritance therein, clear of all incumbrance whatever, of every name and nature, and that he will
warrant and defend the above-described premises in the quiet
234 and peaceable possession of the said party of the second part,
his heirs and assigns, forever.

In testimony whereof, I have hereunto set my hand and seal the day and year first above written.

JOSE ROMERO. his + mark. [SAAL.]

In presence of—
W. Campbell.
K. H. Dimmick.

Territory of California,
District of San José, ss:

On this 24th day of March, A. D. 1849, before me personally came José Romero, to me known to be the person described in and who executed the within conveyance, and duly acknowledged that he executed the same for the purposes therein mentioned.

K. H. DIMMICK,
1st Alcalde.

Recorded April 12th, A. D. 1858, in book C of deeds, page 359, records of Contra Costa county, California.

L. C. WITTENMYER,
County Recorder.

Endorsed on the back:

Recorded in the Jusagdo del Pueblo de San José March 24, A. D. 1849, in book 4 of deeds, page 212.

K. H. DIMMICK, *Alcalde.*

Filed Jan. 4, 1858.

W H. CHEEVERS,
Dep. Clerk.

235 *Deed—Francis P. Wilks and wife to Francisco Otoya.*

This indenture, made this first day of September, anno Domini eighteen hundred and fifty, between Francis P. Wilks and his wife Maria Ceseña, of Santa Clara county, of the first part, and Francisco Otoya, of Contra Costa county, of the second part, witnesseth: That said party of the first part, for and in consideration of the sum of nine hundred dollars in hand, duly paid at or before the ensealing of these presents, the receipt whereof is hereby acknowledged, hath bargained, sold and conveyed, and by these presents doth bargain, sell, convey, quitclaim, release, and grant unto the said party of the second part, his heirs, administrators and assigns, forever, all that particular piece or parcel of land situate and being in the county of Contra Costa, on the north side of the bay, in the valley of San Ramon, joining the farm of the Pacheco, being one whole and undivided eighth part of a rancho granted by Micheltorena, when governor of California, to José and Inocencio Romero; together with each and singular the rights, privileges, and appurtenances, thereunto, or in anywise appertaining. To have and to hold the same unto the said party of the second part, his heirs, and assigns, forever.

And the said party of the first part, for himself, his heirs, administrators, and assigns, doth covenant and agree that at delivery hereof he is the lawful owner of the premises above granted.

In testimony whereof, we have hereunto set our hands and seals, in the city of San José, day and date first above writen.

236 F. P. WILKS. [L. S.]

her
MARIA + CESENA. [L. S.]
mark.

Signed, sealed, and delivered in our presence—

Witness: SULO'R M. CASTRO.
I. A. YOELL.

STATE OF CALIFORNIA,
County of Santa Clara, ss:

On the fifth day of May, A. D. one thousand eight hundred and fifty-eight, before me, John B. Hewson, county clerk in and for said county, personally appeared I. A. Yoell, personally known to me to be the same person whose name is subscribed to the annexed instrument as a witness thereto, who, being by me duly sworn, deposed and said that he resides in San José, Santa Clara county; that he was present and saw F. P. Wilks and Maria Cesena, known to him to be the same persons described in and who executed the annexed instrument as parties thereto, sign, seal, and deliver the same, and acknowledged in his presence that they executed the same freely and voluntarily for the uses and purposes therein mentioned, and that he, the deponent, thereupon signed his name as a subscribing witness.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

JOHN B. HEWSON,
County Clerk.

Deed—Francis P. Wilks and wife to Francisco Otoya.

237 Recorded May 11th, 1858, in vol. 6 of deeds, page 384, records of Contra Costa county.

L. C. WITTINMYER, *Co. Recorder,*
By M. B. HAWISON, *Deputy.*

Endorsed on back:

This deed fas filed for record 20th day of December, 1850, 1 o'clock and 20 minutes. Recorded pages 182 and 183, volume (1,) in recorder's office, in Contra Costa county, 20th December, 1850.

THOMAS A. RROWN,
County Recorder.

Filed for record, at request of F. Vandewater, May 11th, 1858, at 10 o'clock a. m.

The within deed is admitted in evidence, by consent, January 4th, 1858.

E. A. LAWRENCE,
Att'y for Claimant.
P. DELLA TORRE,
U. S. Attorney.

Filed Jan'y 4th, 1858.

WM. H. CHEEVERS,
Dep. Clerk.

238 *Certified copy of deed of Francisco Garcia and wife to Jones, Mitchell, Thompson, and Yager.*

Know all men by these presents that we, Francisco Garcia and Manuela Sepulvida his wife, both of San José, county of Santa Clara, in consideration of the sum of four thousand dollars, lawful money of the United States, to us in hand paid by John M. Jones, William H. Mitchell, James S. Thompson, and Cornelius Yager, the receipt whereof we do hereby acknowledge, have bargained, sold, and quitclaimed, and by these presents do bargain, sell, and quitclaim, unto the said John M. Jones, William H. Mitchell, James T. Thompson, and Cornelius Yager, their heirs and assigns, forever, all our and each of our rights, title, interest, claim, and demand, both at law and equity, and as well as in possession as in expectancy of, in, and to the farm or rancho known as the Juntas, and bounded by the land of deceased William Welch, Juana Pacheco, Joaquin Moraga, and deceased Bartolo Pacheco, with all and singular the hereditaments and appurtenances thereunto belonging, with the exception of moveable or personal property. To have and to hold the said John M. Jones, William H. Mitchell, James T. Thompson, and Cornelius Yager, all our aforesaid right, title, interest, &c., in and to the above-named land or rancho of Las Juntas, to them and to their heirs or assigns forever.

In witness whereof, we have hereunto placed our hands and
239 seals this eleventh day of November, A. D. 1851.

his
FRANCISCO + GARCIA. [L. S.]
mark.
her
MANUELA + SEPULVIDA. [L. S.]
mark.

Signed, sealed, and delivered in presence of—
H. CAMPBELL.

Certified copy of deed of Francisco Garcia and wife, Jones, Mitchell, Thompson, and Yager.

STATE OF CALIFORNIA,
County of Santa Clara, ss:

On this 10th day of November, A. D. 1851, before me, a notary public in and for the county of Santa Clara, personally came Francisco Garcia and Manuela Garcia, his wife, to me known to be the persons described in and signed the foregoing conveyance, and acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and she the said Manuela Garcia, being by me made acquainted with the contents of said conveyance on an examination separate and apart from her husband, acknowledged that she executed the same freely and voluntarily, without undue influence from her said husband, and that she did not wish to retract the execution thereof.

Given under my hand and notarial seal this the day and year above mentioned.

C. T. RYLAND,
Notary Public.

240 STATE OF CAL.,
Contra Costa Co.:

The foregoing instrument was filed for record on the 13th day of November, 1851, at 9½ of the clock a. m. Recorded 15th same month.

THOS. A. BROWN,
Recorder.

STATE OF CALIFORNIA,
County of Contra Costa, ss:

I, Lewis A. Wittimmyer, county recorder in and for said county, hereby certify that the foregoing is a full, true, and correct copy from the record of an instrument duly recorded in my office in book of deeds, volume one, at pages 438, 439, and 440.

In testimony whereof, I have hereunto set my hand and affixed my [SEAL.] official seal this 24th day of December, A. D. 1857.

LEWIS C. WITTIMMYER,
County Recorder.

The within certified copy of deed admitted in evidence, by consent, Jan. 4th, 1858.

E. A. LAWRENCE,
Att'y for Claimant.
P. DELLA TORRE,
U. S. Att'y.

Filed Jan'y 4, 1858.

W. H. CHEEVERS,
Dept. Clerk.

Stipulation in regard to affidavits.

241 In the district court of the United States for the northern district of California.

J. ROMERO *et al.*
vs.
THE UNITED STATES.

It is hereby stipulated that the affidavits of J. W. Redmond, William McDaniel, Edward L. Stetson, Thomas M. Swan, B. C. Whitman, John B. Richmond, and Joseph Winston, upon the motion for rehearing herein, may be used upon the hearing of this cause with the same force and effect and in the same manner as if they were depositions taken in the presence of both counsel for claimants and appellees, subject to all legal objections and exceptions to their competency and relevancy.

It is further stipulated that the deposition of Capt. H. W. Halleck, taken in the case of the city of San Francisco and the United States, No. 280, before the land commission, may be read in the same manner as if taken in this case.

San Francisco, Dec. 27, 1857.

P. DELLA TORRE,
U S. Att'y.
E. W. F. SLOAN.
242 *Assistant Att'y.*
E. A. LAWRENCE,
J. B. CROCKETT,
Att'ys for Claimants.

Endorsed: Filed 4th January, A. D. 1858.
J. A. MONROE, *Cl'k.*

243 *Deed from A. C. Campbell to B. Valencia.*

Know all men by these presents that I, Alvin C. Campbell, of the county of San Francisco, State of California, for and in consideration of the sum of one dollar to me in hand paid, the receipt of which is hereby acknowledged, and for the further consideration of a full settlement this day made by and between Bernada Valencia and Antonio Ma. Pico, on account of the sale of a certain rancho, known as the rancho "Lobos Pintos Lomitas," which said rancho was sold by the said Antonio Ma. Pico, as agent of the said Valencia and her husband, for the sum of six hundred dollars, to Palmer, Cook & Co., two thousand dollars of which sum is now due, for which the said Pico has given an order on the said Palmer, Cook & Co., have remised, released and quitclaim, and do by these presents remise, release, and forever quitclaim, unto the said Bernada Valencia, and to her heirs, all my right, title and interest which I hold in and to the rancho known as the "Los Juntos," situated in the county of Contra Costa, State of California, lying between the rancho of Mariano Castro and Bartolo Pacheco, and being the same piece of land as purchased by me from Mariano Romero, the interest of said Romero being one undivided third of said rancho "Los Juntos," together with the house and corral situated thereon, and all the appurtenances thereunto belonging. 244

In witness whereof, I have hereunto set my hand and affixed my seal this 16th day of February, 1856.

The words "Los Juntos" interlined before signing.

A. C. CAMPBELL. [SEAL.]

STATE OF CALIFORNIA,
County of Santa Clara, ss:

On this sixteenth day of February, A. D. 1856, before me, E. P. Reed, a notary public, in and for said county, personally appeared Alvin C. Campbell, known to me to be the person described in and who executed the foregoing conveyance, and acknowledged that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal, [SEAL.] in the county aforesaid, the day and year last above witten.

EDWARD P. REED,
Notary Public.

245 Recorded, at request of Edwin A. Lawrence, September 30th, 1856, at 9 a. m., in book of deeds, vol. five, on page 231, records of Contra Costa, Cal.

C. YAGER,
Co. Recorder,
By E. PARKER, *Dep.*

Endorsed: Filed Jan'y 11, 1858.

W. H. CHEVERS,
Dep. Clerk.

Deed from B. Valencia and B. Valencia to E. A. Lawrence.

This indenture, made the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and fifty-six, between Maria Bernal de Valencia and Bruno Valencia, her husband, of Contra Costa county, California, of the first part, and Edwin A. Lawrence, of the city of San Francisco and State of California, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of three thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents 246 do grant, bargain, sell, and convey, unto the said party of the second part, and to his heirs and assigns forever, all the right, title, and interest of said parties of the first part, of, in, and to the rancho known as "Las Juntos," situated in the county of Contra Costa and State of California, lying between the rancho of Mariano Castro and Bartolo Pacheco, and being the same piece of land conveyed by A. C. Campbell to said Bernal Valencia, by the name of Bernada Valencia, on the 16th day of February, A. D. 1856, which said deed is recorded herewith, together with all the rights which said parties of the first part, or either of them, may have against Antonio Maria Pico, on account of sale by said Pico to Palmer, Cook & Co., of the rancho "Lobos Pintos Lomitas," mentioned in said deed from said Campbell to said Bernada Valencia, said interests above mentioned being one-third of said rancho of two leagues; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, 247 property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part and his assigns forever.

In witness whereof, the said parties of the first part has hereunto set their hands and seals the day and year first above written.

BERNADA X. VALENCIA. [SEAL.]
BRUNO VALENCIA. [SEAL.]

Signed, sealed, and delivered in presence of—
A. M. CHAPELLE.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this thirtieth day of September, A. D. one thousand eight hundred and fifty-six, before me, Orrin Bailey, a notary public in and for the county, personally appeared Bruno Valencia and Bernada Valencia, his wife, of Contra Costa, personally known to me to
248 be the individuals described in and who executed the annexed
instrument, and severally acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Bernada Valencia, after being made by me acquainted with the contents of said instrument, acknowledged on an examination by me made separate and apart from and without the hearing of her said husband, that she executed the same without fear or compulsion, or under influence of her husband, and that she did not wish to retract the execution of the same.

In witness whereof, I have hereunto set my hand and affixed my [SEAL.] official seal the day and year first above written.

ORRIN BAILEY,
Notary Public.

Endorsed: Filed for record Sept. 30, 1856, at 9 a. m., at request of Edwin A. Lawrence.

C. YAGER, *Co. R.*,
By E. PARKER, *Dep.*

Filed January 11th, 1858.

W. H. CHEVERS,
Dep. Clerk.

Stipulation substituting E. A. Lawrence.

249 In the district court of the United States for the northern district of California.

I. ROMERO *et al.*
vs.
THE UNITED STATES.

It is hereby stipulated that the decree from A. C. Campbell to Bernada Valencia, and the deed from Bernada Valencia and husband to Edwin A. Lawrence, may be filed in this cause, and that the name of Edwin A. Lawrence may be substituted in place of the name of A. C. Campbell as one of the claimants in said case.

E. A. LAWRENCE,
Att'y for Claimants.
P. DELLA TORRE,
U. S. Att'y.

Jan'y 11, 1858.

I do not see that the above can affect the merits, and see no objection.

E. W. F. SLOAN.

Let the above order of substitution be entered in compliance with the foregoing stipulation.

OGDEN HOFFMAN,
Dis't Judge.

250 Endorsed: Filed January 11, 1858.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Dep. Clerk.*

Order withdrawing conveyances.

251 District court of the United States for the northern district of California.

INOCENCIO ROMERO *et al.*
vs.
THE UNITED STATES.
No. 304.

On motion of claimants, it is ordered that they have leave to withdraw certain original conveyances on file in this court, viz: José Romero to José Miguel Garcia, José Romero to Francis Wilkes, Francis Wilks to Francisco Otoya; the attorney for the claimants filing his receipt for said conveyances, which are to be returned as soon as recorded.

OGDEN HOFFMAN,
U. S. Dis't Judge.

Endorsed: Filed April 5th. 1858.

W. H. CHEVERS, *Clerk.*

Dep. of J. Fallon.

United States district court, northern district of California.

THE UNITED STATES
vs.
INOCENCIO ROMERO *et al.*

SAN FRANCISCO, *May* 21*st*, 1858.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the district court of the United States for

252 the northern district of California, duly authorized to administer oaths, &c., &c., came Jeremiah Fallon and Michael Murray, witnesses produced on behalf of the United States in case No. 340, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: P. Della Torre, esq., U. S. dis't att'y, and E. A. Lawrence, esq., for claimants.

Questions by U. S. dis't att'y.

1st quest. What is your name, age, and place of residence?

1st ans. My name is Jeremiah Fallon; 40 years old; and I reside at San Ramon, Alameda county.

2nd quest. Please state all the information you know in this case.

2nd ans. In 1847 Inocencio Romero proposed to sell me a part of this ranch. I asked him who he derived his papers from; his answer was, that he derived them from governor Micheltorena. I asked him what lands belonged to him; he told me the land laid between Moraga's ranch and Mariano Castro's, and from thence
253 running in the direction of Monte Diablo. I asked him if he
had the papers there; he said no, that they were in Monterey. I declined buying from him on account of his not having his title papers.

3rd quest. When did you first come to California?

3rd ans. In October, 1846.

Cross-examination.

4th quest. Did Inocencio Romero tell you whether he had a good title or not for the ranch?

4th ans. He told me he had a good and complete title for it. The piece of land that I proposed to buy was that occupied by negro Garcia. The only reason that I did not buy was because he had not the title papers with him. Romero told me that the creek where Mitchel had a blacksmith shop was his line. The creek is not as far up as the inhuesto tree. Romero was living on the land at the time that I wished to purchase from him; he was also making sales of that land at that time.

5th quest. By what name was this land known at that time?

5th ans. It was known at that time as the sobrante of Romero, or the Romero's ranch.

Counsel for claimants objects to proving anything which
254 Inocencio Romero told witness, as hearsay evidence.

Objection waived.

JEREMIAH FALLON.

Sworn to and subscribed before me this 21st day of May, A. D. 1858.

J. EDGAR GRYMES,
Special Commissioner.

Dep. of M. Murray.

Michael Murray, being duly sworn, deposes and says: My name is Michael Murray; 49 years old; and I reside on the ranch of Amador.

Quest. 1st. Please state all that you know about this case.

Ans. 1st. I had some conversations with Romero, but I could not understand him, as I had just come in the country, and could not speak Spanish. He never showed me any paper for that ranch. This was mere a casual conversation.

Cross-examined.

I have been living on the Amador ranch since 1850. I passed through the Romero ranch in 1848. It was then known as the Romero ranch, and was called the sobrante. I saw improvements on the ranch in 1850, belonging to Romero, which appeared to have
255 been built several years, but I cannot state how long.

MICHAEL MURRAY.

Sworn to and subscribed before me this 21st day of May, A. D. 1858.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed May 21st, 1858.

W. H. CHEVERS, *Clerk.*

Stipulation in regard to dep. of Frémont, &c.

U. S. district court.

THE UNITED STATES
ads. No. 304.
INOC. ROMERO *et als.*

SAN FRANCISCO, *June* 14, 1858.

It is hereby stipulated and agreed that that portion of the deposition of John C. Frémont, taken in the case of the U. S. *vs* J. G. Morehead *et al*, No. 106, relating to the public archives of the late Mexican government in California, be read in evidence herein on the part of the U. S., with the same effect as if the same had been originally taken in this case; and that the following is a true and correct copy of such portion.

P. DELLA TORRE, *U. S. Att'y.*
E. A. LAWRENCE, *Att'y for Clm'ts.*

256 *Dep. of J. C. Frémont.*

United States district court, northern district of Cal'a.

THE UNITED STATES
ads.
JAS. G. MOREHEAD, adm'r.

SAN FRANCISCO, *May* 7, 1858.

On this day, before the district court (by consent) of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came John C. Frémont, a witness produced on behalf of the claimants in case No. 106, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 89 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: The district attorney and Mr. Glassell for U. S., and Mr. V. E. Howard for claimants.

Question by claimant's counsel.

Please to state all you know in relation to the custody of the records and documents belonging to the former government touching land titles in California.

Answer. About August 14, 1846, I received an order from Com. Stockton, then at Los Angeles, directing me to take charge of
257 the public archives, which were then in possession of Don Luis
Vignes, an old resident of Los Angeles, in whose charge they had been placed, as I understood, by Pico Pico. I took possession of them accordingly, and retained them in my possession until about the end of September, when I placed them at what was then called Sutter's fort, on the American river. They made together about two mule loads, and I transported them in that way from Los Angeles to Sutter's fort.

Some time in March, 1847, being myself at Los Angeles, I received an order from Gen. Kearney, dated about March 17, directing me to deliver up all the archives and public papers belonging to the former government. Under this order they were delivered up, and consigned directly, I think, to the care of Mr. Williard P. Hall, at Monterey. They were kept in Mr. Larkin's house, where I saw them about the 13th May, 1847. I had been, up to the time I received the order of Gen. Kearney, military commandant and governor of California. Mr. Hall was with Gen. Kearney, I don't know in what capacity. Mr. Thos. O. Larkin had been acting as U. S. consul. I understood that the archives had been kept in trunks by Mr. Vignes. The Californians had just evacuated Los Angeles when we entered on the 13th
August. The archives were in reasonably good condition. I
258 formed them into bales convenient for packing. They were
under my immediate charge until about the end of September, and up to that time no one but myself had access to them. I, myself, frequently examined them. I think I examined more or less every title in the archives. At the end of September they passed into the charge of E. M. Kern, then commanding at Sutter's fort. About the time we took possession of Los Angeles Pio Pico went to Sonora, where he remained, I think, until hostilities ceased.

Cross-examined.

I was aware of the value of these archives, and took precautions to have them protected. They were packed in bales and covered with blankets, so as to be secure from loss. A part of them were subsequently lost. I carried home some of them to be inspected at Washington. One, I know, I left there. The others were lost with other effects in the mountains of San Juan. One of these titles referred to a grant to Gen'l Castro. It was, I think, a title; whether the full title, or the papers concerning a grant, I am unable to say. This was lost in the mountains. There were three or four lost in the mountains. The one left at Washington referred to the MacNamara grant. The archives I allude to were only those found at Los Angeles. I know nothing of any at Monterey, or at any other point than Los Angeles.

When I last saw them they were at Mr. Larkin's private
259 residence, or in a room adjoining a store above which he resided.
It was not used as a hospital.

* * * * * * * *
* * * * * * * *

J. C. FREMONT.

Taken and subscribed before me this 7th May, 1858.
OGDEN HOFFMAN.

Endorsed: Filed June 14th, 1858.
W. H. CHEVERS, *Clerk.*

Dep. of H. W. Halleck.

Extract from the deposition Henry W. Halleck, taken before Com'r. R. Aug. Thompson, in the cause entitled The United States *vs.* The City of San Francisco:

Answer. I was directed by Governor Mason to examine the archives and report on certain points connected with said land title, which I did. The archives being very voluminous, the examination, for want of time, was not very thorough. The archives were also in great confusion, and much mutilated, and were kept in different places in the town; parts of the same document were sometimes found in different places.

260 With the assistance of W. E. P. Hartnell I arranged them in
the best manner I could under the circumstances. When I first went to Monterey, in January, 1847, I found a portion of the archives in the custom-house, which was then used as a hospital for the sick soldiers and seamen. They were piled up against the wall in the room in which the sick were lying, and the persons in attendance were using them as waste paper.

They were supposed to be custom-house documents and of no value. Some weeks afterwards I picked up a mutilated document from the floor, and on examination found it to be a part of an expediente in reference to land title. I called General Kearney's attention to it, and he sent Mr. Hartnell to see what they were. He reported that they were part of the archives of the government of mixed up with custom-house papers, and they were then removed to a more secure place and locked up.

Another portion of what now constitutes the archives in the custody of the U. S. surveyor general were brought by Col. Frémont from Los Angeles in, I think, the month of May, 1847. They packed on mules, and were in a very bad condition, being much torn and mutilated.

These constitute all the archives now in custody of the 261 surveyor general, except a few that were brought in afterwards by individuals, who stated that they were public documents belonging to the archives.

The fact of such deposit, and, together with the date, was in all cases endorsed on such document either by myself or Mr. Hartnell.

Stipulation

It is hereby mutually stipulated that the foregoing extract of deposition may be used the same as if the whole deposition had been transcribed, on the hearing of this cause.

E. A. LAWRENCE,
Att'y for Claimants.
E. W. F. SLOAN,
For the U. S.
P. DELLA TORRE,
U. S. Att'y.

Endorsed: Filed June 14th, 1858.
W. H. CHEVERS, *Clerk.*

Lep. of Y. Sibran.

United States district court, northern district of California.

THE UNITED STATES,
ads.
INOCENCIO ROMERO.

SAN FRANCISCO, *May 3rd*, 1858.

On this day, before W. H. Chevers, a commissioner of the 262 United States, for the district of California, duly authorized to administer oaths, &c., &c., came Ysidro Sibrian, a witness produced on behalf of the claimant in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by John Argos, a sworn interpreter.

Present: E. A. Lawrence for claimant, and E. W. F. Sloan representing the U. S. dist. att'y.

Questions by claimants' counsel.

1st. What is your name, age, and place of residence?

Answer. Ysidro Sibrian; am little more than 37 years of age; and reside in Contra Costa county, Cal.

2nd. Are you acquainted with the rancho, in said county, known as the Romero rancho; and if so, how long have you known it?

Answer. I know said rancho, and have known it since 1842 263 or 1843.

3rd. Are you acquainted with the Romeros; and if so, do you know when they took possession of said rancho?

Answer. I know the three brothers Romero, and they took possession, or rather Inocencio took possession, of the said rancho in 1842 or 1843.

4th. Did he make any improvements on the said land and place stock there? If yea, state all you know about it.

Answer. He built an adobe house on it. Built a corral, and removed horses and cattle on to it from the Amador ranch, where he resided formerly. He enclosed a small field, in which he planted corn, beans, water melons, &c., for family uses. He had his family there with him. The adobe house above referred to was there a few months ago, and was then occupied by Mr. Tice, who holds under the Romero title. The house is still there, I saw it yesterday.

5th. Do you know whether the Romeros had a title to their land?

Answer. I have never seen the title, but Inocencio Romero told me in San José, some time in 1841, 1842, 1843, or 1844, that he had the title to the land. This conversation occurred subsequent
264 to his taking possession of the land. He first had permission from the judge to occupy the land. I know of Romero going three or four times to Monterey to get his title papers, and the conversation above referred to took place in San José, when Romero was sick there, after his return from Monterey. He then told me, I have my title papers in my pocket all right.

6th. How long have you lived in the vicinity of the Romero ranch? and state how you have been occupied during that time.

Answer. I have been working about there ever since 1833, and moved on to a neighboring ranch with my family in 1852, the ("San Miguel") ranch. I was engaged as cook in 1833, on Welch's ranch. Afterwards was a vaquero in all the neighboring ranchos. Also was employed on the San Raymon ranch in 1842, 1844, 1848, and 1850, sometimes one month and sometimes three months.

7th. What was the general reputation among the adjoining ranch owners as to Romero having title to his land?

Answer. Romero always lived there until he sold out. I always supposed him to have a title to the ranch. It was known
265 by everybody as such and called the Romero ranch, which name it bears at the present moment.

8th. Do you know of the Romero making any sales of his land? If yea, state what you know in regard to it.

Answer. He sold to a man named Frank, a foreigner, and also to Garcia, called the Negro Garcia, and to others whose names I do not know. I don't know exactly when he sold. Garcia was there in 1846.

9th. Do you know of a boundary line being established between the San Ramon ranch, belonging to Castro and Pacheco, and the Romero ranch? If yea, state all you know in regard to it.

Answer. I have heard from the owners of the rancho, of Bartolo Pacheco and Mariano Castro, that the line of division between the ranch in question and that of Bartolo Pacheco commences at the Cañada Verde, running towards the Inhuerto—being a roble engrafted with a willow, on the banks of the Inhuerto creek, which takes its name from this tree—and thence running in a straight line to the "Cuchilla de las Trampas." I have often heard the subject dis-

Dep. of R. Briones.

United States district court, northern district of California.

THE UNITED STATES,
vs.
INOCENCIO ROMERO *et al.*

SAN FRANCISCO, *May 22d*, 1858.

271 On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Ramon Briones, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by Napoleon Bonaparte Smith, a sworn interpreter.

Present: E. A. Lawrence, esq., for claimants, and P. Della Torre, esq., dist. att'y.

Questions by claimants' counsel.

1st quest. What is your name, age, and place of residence?

1st ans. My name is Ramon Briones; 43 years old; and I reside in Contra Costa county.

2nd quest. Are you acquainted with the Romeros and Romero ranch in Contra Costa county; if yea, how long have you known them?

272 2nd ans. I am acquainted with all the family ever since I can recollect. I am also well acquainted with the Romero ranch since 1844.

3rd quest. State when Romero first took possession of the ranch and all you know in regard to their possession of it

3rd ans. In 1844 Amador put cattle on the ranch for the Romeros, but they had not at that time arrived with their families, but they moved on to the ranch with their families in the same year. Inocencio was the only one who had a family. Antonio Maria Pico, alcalde of the pueblo of San José, was ordered by Governor Micheltorena to place the Romeros in possession of the sobrante lying between Castro's and Pacheco ranches, because he had granted it to them. Pico put them in possession at that time, according to the order from the governor. Inocencio Romero built an adobe house near the "Palo Colorado." The same house is now in existence and occupied. He had a garden and stock on the ranch.

273 I have lived in the neighborhood of the Romero ranch since the year 1838. I know he had a title from Governor Micheltorena, because I saw it in the year 1845. All the neighbors understood and conceded that the Romeros had a title for the ranch. Mariano Castro, Bartolo Pacheco, Juana Pacheco, G. Castro, and Joaquin Moraga, who was my father-in-law, José Maria Amador, Guillermo Welch, and Squire Brown, all adjoin and are colindantes of the Romeros' ranch. It was always understood among these parties that

the sobrante of the two leagues belonging to Castro and Pacheco was conceded to Inocencio and José Romero, that the title was in them. My mother owns a ranch in that vicinity. She has had her ranch confirmed to her as Maria Manuela Valencia. I married one of Moraga's daughters in 1846.

Cross-examination.

Quest. 1st. In your reply to the 3rd interrogatory in chief, you say "that Antonio Maria Pico was ordered by Governor Micheltorena to place the Romeros in possession of the sobrante lying between Castro and Pacheco ranchos, because he had granted it to them." How do you know that Governor Micheltorena gave any such order?

Ans. 1st. I know it from having seen the title at Romero's house, and from his being in possession.

Quest. 2nd. Did you ever see the order from Micheltorena
274 to Antonio Maria Pico, directing him to give the possession of
the ranch?

Ans. 2nd. No, sir; I saw the title, but not the order.

Quest. 3rd. Where were you when you saw the title from Micheltorena?

Ans. 3rd. At the ranch of San Felipe.

Quest. 4th. Where is the ranch of San Felipe; and who lived there at that time?

Ans. 4th. It is in Contra Costa county, between the ranches of Welch, Brown, and Martinez. My mother and all the family lived there at that time.

Quest. 5th. Who showed you that title?

Ans. 5th. Inocencio Romero.

Quest. 6th. When was it?

Ans. 6th. In 1845. I do not know the month.

Quest. 7th. Why did Inocencio Romero show you that title?

Ans. 7th. Because the neighboring rancheros had a dispute about
the land, and said Romero had no title for it; upon which
275 Romero pulled out his papers and said, here is my title.

Quest. 8th. Who was it that Romero showed his papers to that day?

Ans. 8th. Inocencio Romero's son read the papers to me, because his father could not read. I do not recollect the name of Romero's son. He is the eldest. I think it is José, but I am not certain.

Quest. 9th. Did you read those papers yourself?

Ans. 9th. No, sir. I did not read them myself, but heard his son read them.

Quest. 10th. Did you examine those papers?

Ans. 10th. I did not examine them, but look on while he was reading them.

Quest. 11th. Do you know the signature of Micheltorena?

Ans. 11th. Yes, sir.

Quest. 12th. Did you see his signature on those papers, and did you examine it?

Ans. 12th. I saw the signature, and I think it was his signature.

Quest 13th. If you was to see that title paper now would you recognize it?

Ans. 13th. If I was to see it and heard it read I would recog-
276 nize it.

Quest. 14th. Did that paper say anything about Antonio Maria Pico's being ordered to give possession to Romero?

Ans. 14th. I saw the title paper but not the order; there was no order of that kind on those papers.

Quest. 15th. In whose handwriting was the title paper that you saw?

Ans. 15th. I do not know.

Quest. 16th. Did Romero read it to you alone, or before others; if so, whom?

Ans. 16th. Only myself, Romero and his son were present.

Quest. 17th. At what place was that title given, and what was its date?

Ans. 17th. It bore date of 1844; from Monterey.

Direct resumed.

1st quest. Does Romero's son read well?

1st ans. He does.

277 2nd quest. Do you read and write?

2nd ans. I read a little, and can only sign my name.

4th quest. Who were the colindantes mentioned in question and answer No. 7th, who were disputing about the boundary line?

4th ans. It was Domingo Peralta.

5th quest. Whose name was signed as secretary on the papers you speak of?

5th ans. I do not recollect.

RAMON BRIONES.

Sworn to and subscribed before me this 22nd day of May, A. D. 1858.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed July 10, 1858.

W. H. CHEVERS, *Clerk.*

Order restoring cause to calendar.

279 In the district court of the United States for the northern district of Cal'a.

J. Romero *et al.*
vs.
The United States.

On motion of plaintiffs' attorney and by consent of the United States district attorney in open court expressed, it is hereby ordered that the above cause be restored to the calendar for the purpose of substituting the names of the real owners of said ranch in place of the original claimants, and for the introduction of such further evidence therein as may be introduced by either party thereto.

San Francisco, Oct. 14th, 1858.

Endorsed: Filed Oct. 14, 1858.

W. H. CHEVERS, *Clerk.*

Motion and affidavits of D. P. Smith and A. J. Tice.

In the district court of the United States for the northern district of California, *ss:*

INOCENCIO ROMERO *et al.*
vs.
UNITED STATES.
No. 314 on land calendar.

280 You will please take notice that on the facts, and for the reasons stated in the annexed affidavits, I shall, on Monday next, the 20th day of Sept., 1858, at the opening of said district court on that day, or as soon thereafter as counsel can be heard, move said court to set aside the order submitting the said cause to the court, and to open said cause for further proof, and also for leave to make the said David P. Smith and Andrew J. Tice parties to the petition for confirmation, and for such other or further order as may be needful to protect the interests of said Smith and Tice in the said lands.

Dated at San Francisco, Sept. 15, 1858.

J. B. CROCKETT,
Att'y for Claimants.

To P. DELLA TORRE, Esq'r., *District Att'y.*

In the district court of the United States for the northern district of California, *ss:*

INOCENCIO ROMERO *et als.*
vs.
THE UNITED STATES.
No. 314 on land calendar.

281 David P. Smith, being duly sworn, deposes that the petition of the claimants in the above cause for confirmation of their title was filed in the land commission on the 28th Feb'y, 1852, after which time, to wit, on or about the 28th day of September, 1853, Francisco Attoyo, one of the claimants, sold to this deponent all his (the said Attoyo's) interest in the tract of land in controversy in this cause, at and for the price of $3,000, which has been fully paid, and for which the deponent holds the receipts of the said Attoyo, specifying that the said sum is in full for the purchase money of the said tract so sold by said Attoyo to the deponent, which receipts deponent is ready to produce to the court. He further deposes that the said Attoyo has left the State of California and gone to foreign parts, without having executed and delivered to deponent a deed for the said premises, and deponent has been compelled to institute a suit in the district court of Contra Costa county against said Attoyo to enforce

such conveyance, which suit is yet pending; that immediately on purchasing said land deponent took possession thereof and has ever since remained and yet is in the quiet possession thereof, and has expended about $4,000 in improving the same.

282 He further deposes that he took the advice of counsel as to the necessity of being substituted in said petition for said Attoyo, and was adviced that such substitution was unnecessary inasmuch as a confirmation to said Attoyo would enure to the benefit of his vendor; but since then some of the petitioners have caused the deposition of said Attoyo to be taken in said cause on behalf of the claimants, wherein he testifies that he has no interest in said lands, having sold the same to this deponent and others in 1853, which deposition was taken in December, 1857, during the absence from this State of J. B. Crockett, the attorney employed by the deponent to represent his interest in said cause and on whom he especially relied, being the only attorney employed by him in the cause. He further deposes that his said attorney did not return to this State until the 14th August last, and after said cause had been submitted, and within the last three or four days deponent has ascertained, for the first time, that in order to protect his interest in said land it is necessary he should be made a party to said cause and substituted for the said Attoyo as one of the claimants, which he prays may be done.

DAVID P. SMITH.

283 Sworn to and subscribed before me, this 15th Sept'r, 1858.

[SEAL.]

CUTLER McALLISTER,
U. S. Com'r.

Andrew J. Tice, being duly sworn, deposes that after the petition of the claimants for a confirmation was filed, to wit, on the 6th day of December, 1853, Inocencio Romero, one of the petitioners, and his wife, by their deed of that date, conveyed to Domingo Pujol and Francisco Sanjurjo all their right, title, and interest in and to the lands mentioned in said petition and which are in contest in this cause, with a stipulation, however, in said deed that in the event of a confirmation of said claim the said grantees should pay to the grantors the sum of three thousand dollars, in addition to the price before then paid; and also that of all the purchase money remaining unpaid from vendors of other portions of said tract claiming under said grantors, one-half should be paid to the grantors and the other half to the grantees. He further deposes that afterwards, to wit, on the 14th Feb'y, 1855, the said Pujol and Sanjurjo, by their deed of that date, conveyed the land so acquired by them to one James W.
284 Tice, who afterwards, to wit, on the 8th day of August, 1855, by his deed of that date, conveyed to this deponent all, which conveyances have been duly recorded, and deponent is now the owner of the said interest. He further deposes that afterwards, to wit, on the 10th day of August, 1856, the said Inocencio Romero, by his certain instrument in writing, under his hand and seal conveyed, assigned, and transferred to one Manuel Miranda, for a valuable consideration, all his interest in the stipulations aforesaid, and in all

monies in any manner to arise therefrom, and by means of the said conveyance and transfer the said Romero ceased to have any interest whatsoever in said lands or the proceeds thereof. He further deposes that afterwards, to wit, on or about the 26th Dec'r, 1857, some of the claimants caused the deposition of said Romero to be taken in said cause, and to be retaken on the 11th Feb'y, 1858, in which depositions the said Romero testifies amongst other things that he had no interest in said lands, having sold, conveyed, and transferred the same as hereinbefore stated. He further deposes that he was adviced by counsel that it was not necessary he should be made a party to 285 said suit, inasmuch as a confirmation to said Romero would enure to the benefit of his vendors; and at the time when said Romero's depositions were taken, J. B. Crockett, the only attorney employed by deponent to represent his interest in said cause, was absent from this State, and did not return until about the 14th August last, after said cause had been submitted, and deponent was not aware until within the last three or four days that it was necessary he should be made a party to said petition and substituted to the rights of said Romero, so far as relates to deponent's interests in said land. But he is adviced by his counsel that unless he is made a party to the said proceeding his rights will be seriously jeopardized, if not totally lost.

A. JACKSON TICE.

Sworn to and subscribed, Sept. 15th, 1858, before me.

W. H. CHEVERS,
U. S. Comm'r.

Endorsed: Filed Oct. 22, 1858.

W. H. CHEVERS, *Clerk.*

286 *Order making Smith and Tice parties.*

INOCENCIO ROMERO *et als.*
vs.
UNITED STATES.
} No. 304.

In the above entitled cause it being represented to the court that since the filing of the original petition for confirmation before the board of United States land commissioners Andrew J. Tice has succeeded to and become the owner of all the right, title, and interest of Inocencio Romero, one of the said petitioners, in and to the lands mentioned in said petition, and which are the subject matter of this suit; and also that David P. Smith has in like manner succeeded to and become the owner of all the right, title, and interest of Francisco Attoyo, of the said petitioners, in and to the said lands, and the said Tice and Smith having petitioned to be made parties to the said cause in order to be allowed to make proof of their respective titles, derived as aforesaid, it is therefore ordered and decreed that the said Andrew J. Tice and David P. Smith be, and they are hereby, admitted as parties to the said cause, with leave to take proof therein in such conveyance, which suit is yet pending; that immediately on purchasing said land deponent took possession thereof and has ever since remained and yet is in the quiet possession thereof, and has expended about $4,000 in improving the same.

282 He further deposes that he took the advice of counsel as to the necessity of being substituted in said petition for said Attoyo, and was adviced that such substitution was unnecessary inasmuch as a confirmation to said Attoyo would enure to the benefit of his vendor; but since then some of the petitioners have caused the deposition of said Attoyo to be taken in said cause on behalf of the claimants, wherein he testifies that he has no interest in said lands, having sold the same to this deponent and others in 1853, which deposition was taken in December, 1857, during the absence from this State of J. B. Crockett, the attorney employed by the deponent to represent his interest in said cause and on whom he especially relied, being the only attorney employed by him in the cause. He further deposes that his said attorney did not return to this State until the 14th August last, and after said cause had been submitted, and within the last three or four days deponent has ascertained, for the first time, that in order to protect his interest in said land it is necessary he should be made a party to said cause and substituted for the said Attoyo as one of the claimants, which he prays may be done.

DAVID P. SMITH.

283 Sworn to and subscribed before me, this 15th Sept'r, 1858.

[SEAL.]

CUTLER McALLISTER,
U. S. Com'r.

Andrew J. Tice, being duly sworn, deposes that after the petition of the claimants for a confirmation was filed, to wit, on the 6th day of December, 1853, Inocencio Romero, one of the petitioners, and his wife, by their deed of that date, conveyed to Domingo Pujol and Francisco Sanjurjo all their right, title, and interest in and to the lands mentioned in said petition and which are in contest in this cause, with a stipulation, however, in said deed that in the event of a confirmation of said claim the said grantees should pay to the grantors the sum of three thousand dollars, in addition to the price before then paid; and also that of all the purchase money remaining unpaid from vendors of other portions of said tract claiming under said grantors, one-half should be paid to the grantors and the other half to the grantees. He further deposes that afterwards, to wit, on the 14th Feb'y, 1855, the said Pujol and Sanjurjo, by their deed of that date, conveyed the land so acquired by them to one James W.

284 Tice, who afterwards, to wit, on the 8th day of August, 1855, by his deed of that date, conveyed to this deponent all, which conveyances have been duly recorded, and deponent is now the owner of the said interest. He further deposes that afterwards, to wit, on the 10th day of August, 1856, the said Inocencio Romero, by his certain instrument in writing, under his hand and seal conveyed, assigned, and transferred to one Manuel Miranda, for a valuable consideration, all his interest in the stipulations aforesaid, and in all

monies in any manner to arise therefrom, and by means of the said conveyance and transfer the said Romero ceased to have any interest whatsoever in said lands or the proceeds thereof. He further deposes that afterwards, to wit, on or about the 26th Dec'r, 1857, some of the claimants caused the deposition of said Romero to be taken in said cause, and to be retaken on the 11th Feb'y, 1858, in which depositions the said Romero testifies amongst other things that he had no interest in said lands, having sold, conveyed, and transferred the same as hereinbefore stated. He further deposes that he was adviced by counsel that it was not necessary he should be made a party to
285 said suit, inasmuch as a confirmation to said Romero would enure to the benefit of his vendors; and at the time when said Romero's depositions were taken, J. B. Crockett, the only attorney employed by deponent to represent his interest in said cause, was absent from this State, and did not return until about the 14th August last, after said cause had been submitted, and deponent was not aware until within the last three or four days that it was necessary he should be made a party to said petition and substituted to the rights of said Romero, so far as relates to deponent's interests in said land. But he is adviced by his counsel that unless he is made a party to the said proceeding his rights will be seriously jeopardized, if not totally lost.

A. JACKSON TICE.

Sworn to and subscribed, Sept. 15th, 1858, before me.

W. H. CHEVERS,
U. S. Comm'r.

Endorsed: Filed Oct. 22, 1858.

W. H. CHEVERS, *Clerk.*

286 *Order making Smith and Tice parties.*

INOCENCIO ROMERO *et als.*
vs. } No. 304.
UNITED STATES.

In the above entitled cause it being represented to the court that since the filing of the original petition for confirmation before the board of United States land commissioners Andrew J. Tice has succeeded to and become the owner of all the right, title, and interest of Inocencio Romero, one of the said petitioners, in and to the lands mentioned in said petition, and which are the subject matter of this suit; and also that David P. Smith has in like manner succeeded to and become the owner of all the right, title, and interest of Francisco Attoyo, of the said petitioners, in and to the said lands, and the said Tice and Smith having petitioned to be made parties to the said cause in order to be allowed to make proof of their respective titles, derived as aforesaid, it is therefore ordered and decreed that the said Andrew J. Tice and David P. Smith be, and they are hereby, admitted as parties to the said cause, with leave to take proof therein in

287 support of their said titles respectively, and with the same effect as if they had united in the original petition for confirmation.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed Oct. 22nd, 1858.

W. H. CHEVERS, *Clerk.*

Dep. of Wm. Comstock.

United States district court, northern district of California.

THE UNITED STATES
vs.
INOCENCIO ROMERO *et als.*

SAN FRANCISCO, *Oct'r* 23, 1858.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came William Comstock, a witness produced on behalf of the claimants, in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn, and testified as follows·

Present: J. B. Crockett, for claimant.

Questions by claimant's att'y.

288 I am 29 years of age; I reside in Contra Costa county; I have no interest in the Romero grant; I am acquainted with Francisco Otoya; I have known him since the summer of 1853; I am acquainted with David P. Smith; he resides on what is called the Romero grant, in Contra Costa county; I think I am acquainted with the handwriting of Francisco Otoya; I have seen him write frequently.

Ques. 1st. Examine the two documents now shown you, marked "Exhibits A and B," and state whether the signatures to the said two documents are genuine, and in the handwriting of the said Otoya.

Ans. 1st. Yes, sir, I think they are both his handwriting. I have heard Mr. Otoya say that he had sold his entire interest in the Romero ranch to Mr. Smith. This was in the fall of 1853. I was at the house the day that Smith took possession—the day Smith was moving his goods. Smith has continued to live upon the ranch ever since, under his purchase from Ortega. Smith has made valuable improvements on the land. I do not know positively where 289 Ortega is. I heard he was in South America. He remained in Contra Costa county from the time he sold out to Smith until some time in this year; that was his home. Smith has continued to occupy the land from the time he bought from Ortega, and he occupies it now. I have seen Ortega frequently since his sale to Smith. He never asserted any claim to the land to me since his sale to Smith.

WM. COMSTOCK.

Subscribed and sworn to before me, this 23rd day of October, A. D. 1858.

CUTLER McALLISTER, *U. S. Com'r.*

Exhibit "A" to dep. of Wm. Comstock.

1853, December 28, Francisco Otoya, Dr.

To cattle from store	75,0000
The Gracia cattle	60,0000
One two-horse wagon by river	19,0000
Paid order to Louis Smith's account against Oteya	8,5000
	10,0000
To cash	7,5000
	18,0000

Received the above amount, fifteen hundred dollars, of David P. Smith, it being in part payment for my one-fifth interest in the Romero grant of land.

December 28, 1853.

FRANCISCO OTOYA.

290 *Exhibit B to dep. of Wm. Comstock.*

March 9, 1854, Francisco Otoya to D. P. Smith, Dr.

To cattle and buggy by Jones	$900 00
To three hundred dollars	300 00
	1,200 00

Received of D. P. Smith the above amount, twelve hundred dollars, it being in full of *of* my one-fifth interest in the Romero grant of land.

FRANCISCO OTOYA.

Endorsed: Filed Oct. 25, 1858.

W. H. CHEVERS, *Clerk.*

Dep. of Wm. B. Rogers.

United States district court, northern district of California.

THE UNITED STATES
vs.
INOCENCIO ROMERO *et als.*

SAN FRANCISCO, *Oct.* 23, 1858.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came William B. Rogers, a witness produced on behalf of the claimant, in case No. 304, being an appeal from the board of commissioners to ascertain and settle the
291 private land claims in the State of California, in case No. 654
on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: J. B. Crockett, for claimant.

Questions by claimants' attorney.

I am 32 years of age, and reside in Contra Costa county; I am acquainted with Francisco Otoya and David Smith; I have known Otoya about two years and a half and Smith longer.

I have conversed with Otoya about his having sold his interest in the Romero grant to Smith. He and I were talking about the changes that had taken place and about titles, &c. I asked him whether he had sold his interest in the Romero ranch to Smith; he said he had I asked him for how much; he said three thousand dollars; that part had been paid in money and part in cattle. I have seen him write a good deal; I should think I would know it. I think the handwriting of the Exhibits A. & B. attached to the deposition of William Comstock is his.

W. B. ROGERS.

292 Subscribed and sworn to before me, this 23rd day of October, A. D. 1858.

CUTLER McALLISTER,
U. S. Com'r.

Endorsed: Filed Oct. 25th, 1858.

W. H. CHEEVER, *Clerk.*

Dep. of J. Shafer.

United States district court, northern district of California.

THE UNITED STATES
vs.
INNOCENCIO ROMERO, *et als.*

SAN FRANCISCO, *Oct. 23rd*, 1858.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Josiah Shafer, a witness produced on behalf of the claimant, in case No. 304, being an appeal from the board of commissioners, to ascertain and settle the private land claims in the State of California, in case No. 654, on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: J. B. Crockett, for claimant.

Questions by claimants' att'y.

293 I am 39 years of age; I reside in Contra Costa county; I am acquainted with David P. Smith and Francisco Ortoya; I have known Francisco Ortoya since the spring of 1852; I knew Smith before that; when I first knew Ortoya he lived on the Romero grant; he moved off the Romero grant in 1853; David Smith moved into the same place.

Ortoya has frequently told me that he had sold his interest in the Romero grant to Smith.

I know of some payments that Smith made to him on account of the purchase money; I helped to deliver some cattle; I believe they were valued at about six hundred dollars.

I know that one store was indebted to Smith, and that Smith turned over this debt to Smith; this debt was afterwards paid in cattle.

I have heard Smith and Ortega talking about the purchase; I have heard Ortoya say frequently that he had got all his money for the purchase.

Smith has made improvements on the land; I should think of the value of between three and four thousand dollars.

I understood Ortoya had gone to Central America; he left the country somewhere about last June; he had remained in Contra Costa
till that time. I have seen him write, and I should think
294 that Exhibits A. & B. attached to the deposition of William
Comstock were in his handwriting.

I have seen him write frequently; I believe that Smith paid Ortoya three thousand dollars and over for the place; I heard this from both Ortoya and Smith.

JOSIAH SHAFER.

Subscribed and sworn to before me this *this* 23rd October, A. D. 1858.

CUTLER McALLISTER,
U. S. Com'r.

Endorsed: Filed Oct. 25th, 1858.

W. H. CHEVERS, *Clerk.*

Dep. of James A. Forbes.

295 United States district court, northern district of California.

THE UNITED STATES,
vs.
INOCENCIO ROMERO *et al.*

SAN FRANCISCO, *Nov'r 5th*, 1858.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the district court of the United States for the district of California, duly authorized to administer oaths, &c., &c., came James Alexander Forbes, a witness produced on behalf of the U. S. in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: P. Della Torre, esq., U. S. dist. att'y, and J. B. Crocket, for claimants.

Questions by U. S. Dist. Att'y.

My name is James Alexander Forbes; age 52, and I reside in Santa Clara. I am acquainted with the Romeros. I know nothing of my own knowledge with the respect of their asking a certain tract of land
situated in what is now, I believe, in Contra Costa county, which
296 I had heard, in 1843 or 1844, he (Inocencio Romero) had peti-

tioned the governor for said land, lying between the lands of Moraga, Lorenzo or Bartolo Pacheco, the deceased William Welch.

In 1844 the deceased Welch applied to me to make out a petition for him to the governor, soliciting the final action of the governor in regard to the issuance of his (Welch) title to the tract of land which he was then occupying by permission of the alcalde of San José. I made out his petition to the governor, and also wrote a letter to that functionary in furtherance of the petition of Welch, whereupon he obtained his title.

(The original espediente in the case of William Welch is here exhibited to the witness.)

The certificate or the report of Antonio Maria Pico is in my handwriting.

The sketch or diseño was made by me. It is my handwriting. The body of the petition is in my handwriting. There is nothing more in that espediente in my handwriting.

(Document on page 440, Departmental State Papers, vol. 5, books 1, 2, 3, 4, 1840–'41–'42–'43–'44, from the archives from the U. S. surveyor's office for the State of California, is now shown to the witness.)

297 This is the letter that I have already testified to, which I wrote to Governor Micheltorena.

Paper marked exhibit A, J. E. G , is a correct translation. I made it myself. I am perfectly familiar with the Spanish language. I have spoken and written it 42 years.

At the time of writing that letter I was British vice-consul. I was intimate and on friendly terms with Governor Micheltorena.

Cross-examined.

I believe that Welch obtained the grant which is contained in that expediente. I do not know whether the land said to be granted to Romero is comprised within the tract which is granted to Welch. I am familiar with the lands in that locality. I have been over those lands several times. I could not state with precision that the land claimed by Romero conflicts with the land granted to Welch or not, as I do not know the locality of the claim of Romero.

Direct examination resumed.

What induced you to write that letter above referred to?

Ans. The representation of Welch, who informed me that Romero was endeavoring to get a grant of a portion of the lands of Welch, as is explained in the aforesaid letter to Gov. Micheltorena.

298 (J. B. Crocket, esq., for the claimants, objects to the answer as hearsay.)

JAS. ALEX. FORBES.

Sworn to and subscribed before me, this 5th day of November, A. D. 1858.

J. EDGAR GRYMES,
Special Commissioner.

[Copy.—Translation.]

Translation of exhibit A, to dep. of J. A. Forbes.

PUEBLO DE SAN JOSÉ, *Feb.* 9, 1844.

MY VERY RESPECTED SIR: The bearer of this is Mr. William Welsh, a man who formerly enjoyed a moderate fortune and the favorable opinion of his acquaintances. He now finds himself reduced to a lamentable state of misfortune, caused by a long and incurable illness, which has deprived him also of the moral courage to bear up against his adversities, originating in his great losses and sacrifices in his ineffectual efforts for the acquisition of a rancho. His family, hitherto accustomed to an ample maintainance, are now compelled to labor personally yet honorably in the fields, to obtain the means of sub-
299 sistence.

Mr. Welsh has been informed that a certain Mr. Romero has petitioned for a grant of the land that he Welsh has occupied during fourteen years, and as this is not the first attempt that has been made towards the same object, Mr Welsh has asked of me to present to your excellency his petition, which I do with pleasure, in view of the unhappy situation to which the unfortunate family of Welsh would be reduced were they deprived of the poor tract of land that he has selected; and particularly, under the circumstances in which he is placed, being compelled to withdraw the few cattle that remain to him on the rancho of Mr. Martinez, in all the month of the ensuing April.

Poor Welsh goes (to Monterey) to solicit the grant of the land in question, and I can assure your excellency that he only asks justice.

I am, your excellency, with the most sincere sentiments of respect and affection, your most obedient servant,

JAMES FORBES.

Señor D. MANUEL MICHELTORENA.

Endorsed: Filed November 5th, 1858.

W. H. CHEVERS, *Clerk.*

333 *Exhibit, expediente of Wm. Welsh to dep. of J. A. Forbes.*

300 Expediente promovido por Dn. Guillermo Welsh en solicitud de el parajé q. se espresa.

Año de 1844.

(344.)

Jurisdiccion del Pueblo de S. José Guadalupe, año de 1834.
Espediente sobre el parage nombrado Las Juntas solicitado pr.
GUILLERMO WELH.

Sello tercero—dos reales.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

RAFAEL GONZALEZ.
FIGUEROA.

Sor. Com'te Gral y Gefe Supor. Polito.:

MONTEREY, *Junio* 1, *de* 1834.

301 De conformidad con los leyes de la materia informe el ayuntamiento, del Pueblo de San José Guadalupe, si el interesado en esta instancia obtiene los requisitos prevenidos para sea atendido en su solicitud: si el terreno que pretendo esta comprendido en las veinte leguas limitrofes ó diez litorales que espresa la ley de 18 de Agosto de 1824, si es de regadio temporal ó abrevadero, si pertenece á la propiedad de algun particular, corporacion, mision ó Pueblo, con todo lo demas, que se conveniente á ilustrar la materia, haciendo que el interesado presente.

A. V. T. el diseño del terreno que solicita y la carta de naturaleza que obtenga que se agregará
á esta espediente. Evacuado
302 que sea pasará todo al
R. P. ministro de la mision de San José para que ponga lo q^{e}. le ocurra sobre el particular.

El Sor. Don José Figueroa, general de brigada, comand^{te} general ynspector y gefe superior politico de la Alta California asi lo mandé decretó y firmo de que doy fé.

JOSÉ FIGUEROA.

PUEBLO DE SN. JOSÉ G.

20 *de Octubre, de* 1832*:*

Se la concede al interesado el parage que pretende en calidad de prestado en la inteligencia qe. el el gobierno no lo hubiere á bien lo desocupara.

YGNO. PERALTA.

Guillermo Welh de nacion Yrlandes y avecindado en esta provincia hace trece años, casado con Maria Antonio Galindo natural del Prese. de S. Francisco V. S. con el respecto debido y conforme haya lugar en derecho parece y dice. Que haciendo como dos años q^{e} se halla avecindo en el parage llamado Los Juntas como consta del documento q^{e} respetuosam^{te} acompaño á V. S. y teniendo en el mar de mil cabezas en ganado Bacuno, su casa y siembras, ocurre á V. S. con el mayor respecto con el fin de qe. se digne confirmarle la propiedad de dho. sitio, p^{r} qe. p^{r} falta en parage pa. aumentar dho. ganado se le extravia mucho, temindo qe. andar vagando con el ganado qe. puso alli, envio á otro parage pa. qe. se le concedio este parage enteramte. p^{r} lo qe. suplico á V. S. rendidamte. se digne concederme como tengo pedido en al memorial presentado al alcalde del pueblo de Sn. José qe. á este acompaño. Por tanto pido y supplico tenga la dignacion de proveer, á mi favor como tan propenso qe. es á hacer felices los habitantes en este suelo en qe. recibire gracia y merced.

Monterey, 3 de Junio, de 1834.

SOR. GUILLERMO WELSH.

SOR ALCALDE CONSTITUCIONAL:

Julian Wil de nacion Yrlandes, casado con Ma. Anto. Galindo, natural del presidio de San Francisco ante V. con el devido respeto se presenta p^{r} medio de este escrito diciendo: que timendo un piep^{r} medio de este gona lo Bacuno en numero de quatrocientos cabezas, y no teniendo absolutamte.
303 un terreno valdio donde ponerlo pa. tener la subsistencia segura de mi familia, á lo qe. se agrega estar insol-

vente á causa de los muchos gastos qe. tube en la solicitud del terreno del Monte del Diablo en tiempo del govrn'o del Sr. Echeandia p^{r}. lo qe. solicito en calidad de prestado y h'ta la aprobacion del gefe nato de esta provincia, dos leguas en el parage blamado *Las Juntas*, asi al Norte, sitio qe. este baldio, teniendo de colindante al teniente retirado C. Ygno. Martinez distante de su terreno, como dos leguas p^{r}. tanto. A. V. suplico rendidamte. tenga en concideracion esta mi solicitud qe. con tanta necesidad pido pa. tener seguro estos mis cortos vienes, y pagar algunos creditos qe. tengo pendientes de resultas de los muchos gastos parados en solicitud del referido sitio del Monte del Diablo, esperando de su bondad herá propicia esta mi solicitud en qe. recivira y merced conformandome en todo con lo qe. tenga abien decretarme.

B. L. M. de V.

GUILLERMO WELL.

AGUSTIN V. ZAMORANO,
Sor. Alcalde Constitucional.

Certifico en debida forma, que la parte occidental del terreno llamado Las Juntas, ha sido ocupado por espacio de trece á catorce años, por el Sor D. Guillermo Welsh, y que nunca ha pertene-
304 cido á particular alguno. Sus limites del espresado terreno son, por el norte el Arroyo del Hambre, por el oriente, el Arroyo de las Nueces, que tambien lo divide por el sur del terreno del Sor Lorenzo Pacheco; y por el occidente colinda, con el Sor Moraga; y para los fines que conbéngan al interesado, doy el presente certificado, á los 9 dias de Febrero de 1844, en el Pueblo de San José.

ANTONIO MA. PICO.

Selle cuarto dos reales.—Habilitado provisionalmente por la Aduana Maritima del Puerto de Monterey, en el departmento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA G.

MICHELTORENA.
[SEAL.]

MONTEREY,
Feb'o 12 de 1844.
Ynf'e el S. Srio del Despacho con presencia de los antcedentes y pidiendo antes los q'e crea necesario.
305 MICHELT'A.

EXMO. SEÑOR. Guillermo Sor: Guillermo Welsh, originario de la Yrlanda residente en este departmento hace veinte y tres años, casado con Mejicana y padre de ocho hijos. Ante V. E. respetuosamente expongo. Que hace quince años, solicite al Sor Echandia, un terreno llamado Monte del Diablo, para la conservacion y aumento de mil y dos cientos cabezas de ganado mayor fruto de mi industria y una fortuna prospera. Se me dieron las mas bellas y lisongeras promesas, que me seria adjudicade el terreno espresado: mas despues de haber rrogado enormes gastos y afanes en cinco viages que emprendi desde este punto hasta San Diego, para obtener el titulo, tuve la mortificacion de ver que mi esperanzas pueron ilusorias, habiendo sido frustradas por las maquinaciones de personas interesadas.

EXMO.

Cerciorado que habia trabajado y gastado en vano, me vi obligado á transportar, mi ganado de rancho en rancho, (a grandes espensas,) donde mejor podia resguar darse y en Octubre de 1832, solicite provisionalm^{te} al alcalde del Pueblo de San José parte del terreno llamado Las Juntas que como manifiesta el adjunto diseño, queda al occidente del terreno ocupado por Dña. Juana Sanchez y del Monte del Diablo.

El Sor. Alcalde atendió á mi solicitud, decretando á mi favor, y en
seguida prosequi mi solicitud para la propiedad, al Sor. Fi-
306 gueroa, mas una enfermedad fortuita me impidio segun los
tramites legales, pa. conseguir mi titulo, y aunque tuve interalos de alivio, las convulsiones politicas no daban lugar a verificarlo. Emprendi la fabrica de una casa de adoves, en d'ho sitio; pero la suerte adversa me volvio á abatir en la enfermedad, mis bienes casi todos se dispersaron, y apenas puede poner en salvo el corto numero de cuatro cientos cabezas; los que entreque á manos agenas para su conservacion, y que actualmente existen en el rancho de D. Ygnacio Martinez mi casa participó en la general ruina y para colmo de mi desgraciada suerte, se ha tratado de despojarme del mencionado terreno de Las Juntas, unico asilo pa. mi poare familia.

Ocurro pues Exmo. Sor. en medio de mis infortunios á V. E. como recto defensor del desvalido; imploro señor, la poderoso intervencion de V. E. suplico rendidamente se digne de mirar propicia mi causa, concediendome el terreno (que he ocupado ya diez anos) en propiedad con arreglo al diseño que con otros documentos relativos á la materia, tengo el honor de acompañar. El terreno que solicito, tiene por limites hacia el norte el Arroyo del Hambre, por el oriente Arroyo de las
Nueces; el sur y occidente terrenos del Sor. Lorenzo Pacheco
307 y Joaquin Moraga: Todo es de abrevadero, y no tiene mas de
un aguage permanente. Su mayor estensionde norte á sur podró ser tres leguas, y de oriente á poniente de media, á tres cuartos de legua.

Por tanto

A. V. E. respetuosamente suplico se digne de proveer como llevo pedido, en que recibire gracia y justicia. Pueblo de San José y Febrero 9 de 1844.

GUILLERMO WELSH.

SOR. GOBERNADOR: El terreno de Las Juntas fué prestado por el juez del Pueblo de Sn. José á Dn. Guillermo Welsh desde 20 de Octubre 832, y desde entonces lo ocupó con casa y bienes hasta el año de 838, qe. lo desocupo por hallarse enfermo segun ha justificado, y fue motivo tambien para qe. se paralisase el espedte. y promovio desde 9 de Junio de 834, para adquirir la propiedad del terreno ahora tiene temores de q. se lo quieren denunciar, y como quiere volverlo á ocupar indispensablemente dentro de dos meses por no tener donde poner su ganado, pide de la bondad de V. E. se digne concederle la propiedad que en mi concepto es juisto lo que pide, por ser honrado tener mucha familia y ser cierto los gastos que ha hecho para la ocupacion del.

308 (Here follows map, marked original, page 308.)

309 Sello quinto un real.—Habilitado provisionalmente por la Aduana Maritima del Puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

MICHELTORENA.

[SEAL.]

Terreno, y todo lo demas que espone en sus escritos.

Como el parage esta rodendo de arroyos conocidos, no puede perjudicar á mingun colindante, y como el juez de San José da su certificado en f'ha 9 del corrte. por esta razon no me ha parecido necesaria pasar les este espediente para que informen por lo espuesto el superior dicernimto. de V. E. resolvera lo que éncontrare por conveniente.

MONTEREY, *Febrero* 19 *de* 1844.

MAN'L JIMENO.

MONTEREY, *Febo.* 12 *de* 1844.

Espidasele el titulo con las condiciones de ley.

MICHELT'A.

MONTEREY, 20 *de Febro. de* 1844.

Vista la peticion con que da principio este los documentos é informes que preceden con todo lo demas que se tubo presente de
310 conformidad con las leyes y reglamtos. de la materia declaro á
Dn. Guillermo Welsh dueño del terreno nombrado Las Juntas, colindante con el Arroye de las Nueces y con el del Ambre, sin perjudicar los linderos de D. Lorenzo Pacheco, el de Da. Juana Sanchez el de Don Ignacio Martinez, y el de D. Joaqn Moraga. Librese el correspondte. despacho en el que se pondran tres sitios de ganado mayor, tomese razon en el libro respectivo, y dirijase este espedte. á la Exma. Junta pa. su aprovacion. El Exmo Sr. Gral. Gobdor. del Departamto. asi lo mando, decreto y firmó.

Endorsed : Filed Nov. 5th, 1858.

W. H. CHEVERS, *Clerk.*

Translation of espediente of Wm. Welsh to dep of J. A. Forbes.

SENOR COMM'G GEN'L AND SUP'R POLITICAL CHIEF:

Guillermo Welsh, Irish by birth, and residing in this province for thirteen years, married to Maria Antonia Galindo, native of the presidio of San Francisco, before your honor, with due respect and in form of law, appears and says, that it being about two years that he has been residing in the place called Las Juntas, as proved by
311 the document which he respectfully annexes to this, and having therein more than a thousand head of neat cattle, a house and fields, he most respectfully applies to your honor for the purpose that you may be pleased to confirm to him, as his property, the said place: as for the want of a location for the increase of the said cattle he has lost many, he having to go wandering after the cattle, which he located there, from place to place, until this was temporarily conceded to him.

Wherefore he humbly prays your honor will be pleased to grant it to him, as he has asked in the memorial presented to the alcalde of the town of San José and hereto annexed. For all of which I ask and pray your honor will have complacency to decree in my favor, your honor being so much inclined to make happy the inhabitants of this soil. And he will ever pray, &c.

MONTEREY, *9th June*, 1834.

GUILLERMO WELSH.

Marginal decree.

MONTEREY, *June* 10, 1834.

In accordance with the laws on the matter, let the ayuntamiento of the town of San José Guadalupe report whether the party interested in this instance has the provided requisites for being attended to in his application; whether the tract of land that he asks for is
312 comprehended in the twenty boundary leagues or ten littoral ones which are expressed in the law of the 18th of August, 1824; whether it is irrigable, temporal, or pasture; whether it is private property or the property of any corporation, mission, or town, and any other matter that may illustrate the subject; causing the party to present a plan or map of the tract of land he solicits, and the letter of naturalization he may obtain, to be annexed to this espediente; after which it shall be passed over to the rev'd father, the minister of the mission of San José, in order that he may state what occurs to him on the subject.

The honorable José Figueroa, brigadier general, commanding general, inspector, and superior political chief of Upper California, thus ordered, decreed, and signed, to which I testify, &c.

JOSÉ FIGUEROA.

AGUSTIN V. TAMORANO, *Secretary.*

Petition.

To the constitutional alcalde:

Guillermo Welsh, Irish by birth, married to Maria Antonia Galindo, native of the presidio of San Francisco, before you with due respect appears by way of this writing, and says that, having a lot of neat cattle to the number of four hundred head, and absolutely
313 having no vacant place to keep them at for the sure subsistence of his family, to which added his being insolvent on account of the great expenses which he incurred in the application for the tract of land on the Monte del Diablo, at the time of the government of Señor Echandia; he therefore solicits (in the quality of a loan, and with the approbation of the legal chief of this province) two leagues in the place called Las Juntas towards the north, a place which is vacant, being bounded by the retired lieutenant citizen, Ignacio Martinez, distant from his tract about two leagues. Wherefore I humbly pray that you will take into consideration this my solicitation, which with so great necessity I ask, in order to secure my limited property and to pay some debts which I have outstanding, arisen from the

many expenses made in the application for the said tract of Monte del Diablo; hoping from your kindness you will regard propitiously this solicitation, by which he shall receive favor, and submit to the decree you may be please to issue on this case.

I kiss your hands.

GUILLERMO WELSH.

Marginal decree.

TOWN OF SAN JOSÉ G., *20th of October*, 1832.

314 Is conceded to the party interested the place which he asks
for, as a loan, with the understanding that should the government not approve it he shall quit the same.

IGNACIO PERALTA.

Certificate.

I certify in due form that the western part of the place called Las Juntas has been occupied for the space of from thirteen to fourteen years by one William Welsh, and that it has never belonged to any individual. The limits of the said place are: on the northward the Arroyo del Hambre, on the eastward the Arroyo de las Nueces, which also divides it on the southward from the place of Señor Lorenzo Pacheco, and on the westward it is bounded by Señor Moraga's; and for the purpose which may be convenient to the party interested, I give the present certificate this 9th day of February, 1844, at the town of San José.

ANTONIO MA. PICO.

Petition.

To his excellency:

William Welsh, native of Ireland, residing in this department
twenty-three years, married to a Mexican woman, and father of eight
children, before your excellency respectfully represents: That
315 fifteen years ago I applied to Señor Echandia for a tract of land
called Monte del Diablo, for the keeping and increase of one
thousand two hundred head of large cattle, fruit of my industry and good fortune; that the most pleasing and flattering promises were given to me that the said tract of land would be adjudicated to me, but after having disbursed enormous expenses, and expended labor in five voyages which I made from this point to San Diego to obtain the title, I had the mortification to see that my hopes were illusory, having been frustrated through the machinations of interested persons. Assured that I had worked and made expenses in vain, I saw myself obliged to remove my cattle from rancho to rancho, (at great expense,) wherever I could best keep them; and in October, 1832, I applied provisionally to the alcalde of the town of San José for a part of the place called Las Juntas, which, as is shown in the accompanying map, lies on the west of the tract occupied by Doña Maria Sanchez, and of the Monte del Diablo. The señor alcalde took into consideration my application, decreeing it in my favor, and accordingly I applied

to Señor Figueroa for the grant in fee; but a sudden sickness prevented me from pursuing the legal steps to obtain my title;
316 and although I was better occasionally, the political convulsions did not allow me to accomplish it. I commenced building an adobe house on the said place; but through adverse fortune my sickness again returned upon me, my property was nearly all scattered, and I could scarcely save it to the small number of four hundred head, which I delivered to another party to take care of, and which now exist in the rancho of Don Ignacio Martinez. My house partook of the common ruin, and to complete my unhappy lot it has been attempted to take from me the said place, Las Juntas, the only asylum for my poor family. I resort, therefore, in the midst of my misfortunes, to your excellency, as the upright defender of the poor. I implore, sir, the powerful intervention of your excellency, and humbly pray you will be pleased to regard propitiously my cause, conceding to me the tract of land (which I have occupied already for ten years) in ownership according to the map, which, together with other documents relative to the matter, I have the honor to annex hereto. The tract of land which I ask for is bounded towards the north by the Arroyo del Hambre, on the east by the Arroyo de las Nueces, on the south and west by the lands of Señor Lorenzo
317 Pacheco and Joaquin Moraga. It is all of pasture land, and has no more than one permanent spring. Its greatest extension from the north to the south may be three leagues, and from the east to the west from half a league to three quarters of a league. Wherefore I respectfully pray that your excellency will be pleased to decree as prayed for, wherefore I shall receive mercy and justice.

PUEBLO OF SAN JOSE, *9th February*, 1844.

GUILLERMO WELSH.

Marginal decree.

MONTEREY, *Feb'y* 12, 1844.

Let the secretary of state report upon it in view of the foregoing, and asking for others that he may deem necessary.

MICHELTORENA.

Secretary's report.

SEÑOR GOVERNOR: The tract of Los Juntas was loaned by the judge of the town of San José to Don William Welsh, from the 20th of October, 1832, and after that he occupied it with a house and property until the year 1838, when he ceased to occupy it on account of his finding himself sick, as he has proved; and that was the reason why the proceedings were stopped which he commenced on the 9th of June, 1834, to obtain the ownership of the tract. He enter-
318 tains fears now that some persons wish to denounce the same land, and as he desires to occupy it again within two months, not having anywhere to place his cattle, he asks from your kindness that your excellency will be pleased to concede to him the ownership; and in my opinion what he asks for is according to justice, he being

an honest man, and having a large family, and it being true the expenses he has made for the occupation of the place and all other matters that he states in his representations. As the place is surrounded by known arroyos, he cannot injure any adjoining neighbors; and as the judge of San José has given his certificate bearing date the 9th instant, for this reason I do not think it necessary to pass this espediente to the adjoining neighbors that they may report on it. On this statement, from your superior discernment your excellency will resolve what you may find as convenient.

MANUEL JIMENO.

MONTEREY, *February* 19, 1844.

Decree.

Let the title be issued to him with the conditions of law.

MICHELTORENA.

MONTEREY, *Feb'y* 12, 1844.

319 *Concession.*

MONTEREY, 20*th February*, 1844.

In view of the petition wherewith this begins, the foregoing documents and reports, with all other matters which have been represented, in conformity with the laws and regulations on the subject, I do declare Don William Welsh owner of the tract of land called Las Juntas, bounded by the Arroyo de las Nueces and by that of Del Hambre, without prejudice to the boundaries of Don Lorenzo Pacheco or that of Doña Juana Sanchez, or that of Don Ignacio Martinez, or to that of Don Joaquin Moraga. Let the proper patent be issued, wherein shall be put three sitios de gañado mayor, or three square leagues. Let it be entered in the proper book, and this expediente be directed to the most excellent assembly for its approbation.

The most excellent señor general, governor of the department, thus decreed and signed.

Endorsed: Filed Nov. 5th, 1858.

W. H. CHEVERS, *Clerk.*

320 *Dep. of José Romero.*

United States district court, northern district of California.

THE UNITED STATES
vs.
INOCENCIO ROMERO *et al.*

SAN FRANCISCO, *Nov.* 4*th*, 1858.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came José Romero, a witness produced on behalf of the , in case No 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the

State of California, in case No.   on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by Richard Tobin, a sworn interpreter.

Present: P. Della Torre, esq., U. S. dist. att'y, and J. B. Crockett esq., for claimants.

Questions by dist. atty.

What is your name, age, occupation, and place of residence?

Answer. My name is José Romero; 58 years old; ranchero; and I reside at Agua Caliente, near the mission of San José.

2nd question. Did you and Inocentio Romero and Mariano,
321 ever made an application to Governor Manuel Micheltorena for
a concession of land?

Answer. Yes, sir.

3rd question. Where was the land situated?

Answer. In the Cañada de San Ramón para Las Juntas.

4th question. What proceedings were taken upon your petition?

Answer. They give us a decree to measure the lands situated between the ranchos Joaquin Moraga, Juban Wil, and Lorenzo Pacheco.

5th question. Did you ever have that land measured?

Answer. No, sir.

6th question. Did you obtain a grant of it from Governor Manuel Micheltorena?

Answer. No, sir. An order to measure the land.

7th question. Why was the land not measured?

Answer. Because the judge told me that he did not know how to measure the land.

8th question. Then you never received from Governor Man-
322 uel Micheltorena the final grant or titulo to the land that you
petitioned for?

(Question objected to by counsel for claimant.)

The objection was not interposed before the witness gave his answer.

Answer. No, sir.

Cross-examined by E. B. Crockett, esq

Question. Who presented the petition to Micheltorena for the grant?

Ans. Inocencio Romero, my brother.

9th quest. In what year was this?

Ans. In 1844.

10th quest. Did you ever see the petition?

Ans. Yes; I saw it in the same year, 1844.

11th quest. Where, and was it before or after it was presented to Micheltorena?

Ans. I saw the petition after it was presented to Gov. Micheltorena and when the order came to measure the land.

12th quest. In whose possession did you see it?

323 Ans. I saw it in the possession of the alcalde, Guillermo
Castro.

13th quest. Did you ever live upon the land?

Ans. A little while; only one sowing, in 1846.

14th quest. Did your brother Inocencio live upon the land; and if so, when did he first go there and when did he leave it?

Ans. Inocencio lived upon the land. I do not recollect when he first went there He left when he sold out.

15th quest. Did he live upon the land before the petition was presented; and if so, how many years?

Ans. He did not live there before; he lived there afterwards.

16th quest. Can you read or write?

Ans. No, sir.

17th question. Were there any papers which accompanied the petition when you say you saw it in the hands of Castro, the alcalde?

Ans. No. I do not recollect. I saw only the order.

18th quest. What became of those papers which you saw in the hands?

324 Answer. They were left in the hands of the two alcaldes, Guillermo Castro and Antonio Maria Pico.

19th quest. Have you ever seen them since?

Answer. No, sir. My brother Inocencio took charge of that business.

20th quest. Who had the management of the business concerning of obtaining the title papers of the ranch? Was it you or your brother Inocencio?

Answer. Inocencio had the charge of all the business.

21st quest. Where did you live in 1843?

Ans. In the Pueblo—the Pueblo of San José.

22nd quest. How far was that from the ranch in question?

Ans. I believe it is about 18 leagues, more or less.

23rd quest. Where did you live in 1844?

Ans. In San Lorenzo.

24th quest. Were you on the land in controversy in 1843?

325 Ans. No. I was not there permanently, but I went there to see it.

25th quest. Did you ever see the petition for the grant, and the order for the measurement of the land, at any other time than when you saw it in the hands of Castro, as you have stated?

Answer. I never saw it except this day on file in this case.

26th quest. Who showed it to you this day?

Answer. The district attorney.

27th quest. How do you know that the paper that you saw to-day is the same paper which you saw in the hands of Castro?

Answer. For what the words of the paper say.

28th quest. Do you recollect what the paper that you saw in Castro's hands contained? and if so state it.

Answer. I do recollect: Measure the land between the colindantes Joaquin Moraga, Julian Wil, and Lorenzo Pacheco.

29th quest. Is that all that the paper contained?

Answer. No, sir. "To concede it to the petitioners," were also on the paper.

326 30th quest. State all you can remember of the contents of the paper; give the words of it as near as you can remember.

(Objected to by the district attorney, because these papers have been put in evidence by the claimants themselves, and are the best evidence of their own contents.)

Answer. I do not remember no more than what I have said. What interested me the most was the order from the governor.

31st quest. Where did your brother Inocencio resided in 1844?

Ans. I believe he was living at the mission of San José. He had no house. He was living some time on the rancho of José Maria Amador, sometimes at the Pueblo. He was sickly.

32nd quest. Did he not live upon the ranch petitioned for by you and your brothers in 1844?

Ans. No, sir; it appears to me that it was either in 1845, 1846, or 1847, that he lived on the ranch; I do not recollect exactly.

327 33rd quest. What steps, if any, were taken for the measurement of the land of the rancho?

Ans. There were no steps taken, as the judge could not measure.

34th quest. Did you apply to the judge to measure it, and did he refuse to measure it?

Answer. No, sir; the order came to him; he did not measure, for did not feel willing so to do.

35th quest. Do you know whether any other person petitioned for or claimed this rancho; and if so, who?

Ans. No, sir. Yes, sir; Francisco Soto claimed it, but he had no papers.

36th quest. Were the lands of this rancho embraced in any grant to any other person, as far as you know, or were they claimed by any one except Francisco Soto?

Answer. No, sir; nothing from any other person.

37th quest. Did you ever have a suit with Domingo Peralta before the alcalde about this ranch?

Answer. No, sir.

38th Quest. Did your brother Inocencio ever had such a suit?

328 Answer I do not know.

39th quest. What became of your interest in the ranch?

Answer. I sold it to Negro Garcia in 1847 or 1848; I do not recollect exactly when.

40th quest. Did you sell it to him before or after the Americans came into the country?

Ans. Before.

41st quest. Did your brother Inocencio build a house upon the rancho; and if so, in what year?

Answer. I believe he did build a house there in 1845 or 1846; I do not recollect exactly when. I did not live there with him, so that I do not know.

42nd quest. Are you certain that he did build the house there in 1844?

Ans. I am certain that he did not.

43rd quest. Did he have any cattle upon the land in 1844?

Ans. No, sir.

44th quest. Did he have any upon it in 1845?

329 Ans. I do not know.

45th quest. Would you not have known it if he had?

Ans. I cannot answer as to the year 1845. He had cattle there. I do not know if he had any; he might have had and I should not have known it.

46th quest. Do you know whether your brother Inocencio went to Monterey to see about getting the title paper for the ranch?

Answer. Yes, sir; I know.

47th quest. In what year did he go?

Ans. In 1844.

48th quest. Was he at Monterey afterwards?

Ans. I do not know.

49th quest. Were you and your brother living at the same place in 1844 and 1845?

Answer. No, sir.

50th quest. How often did you see him during those two years, as far as you can remember?

Ans. I do not remember.

330 51st quest. Did you see him as often as 10 times during those two years?

Answer. I do not remember if I saw him during those two years, because he lived away from the Pueblo. Two or three years passes without we seeing each other.

52nd quest. Were you upon this ranch in 1844 or 1845 at all?

Answer. I was not there in 1844 or 1845, and not before 1846, excepting in 1843.

53rd quest. Had Inocencio a house on the ranch when you were there in 1846?

Answer. No, sir.

54th quest. Had he any cattle upon the ranch then?

Answer. I do not know; he might have had. I never lived on the rancho.

55th quest. Where did Inocencio live in 1846?

Ans. I do not know where he lived; he could know.

56th quest. How long did you remained on the rancho in 1846?

331 Ans. I do not tell you that I never lived on that ranch; no one can say that I did.

57th quest. Were you ever upon the ranch at all since 1843?

Answer. I never was there since 1843. I went in that year to see the land to petition for it. In 1846 I passed over it.

58th quest. Who requested you to come here to testify in this case?

Ans. The district attorney.

59th quest. Did you call to see the district attorney?

Answer. I presented myself to the dist. att'y when he sent for me.

Examination adjourned until to-morrow, at 10 o'clock a. m., Nov. 5th, 1858.

San Francisco, *November 5th*, 1858.

Present: P. Della Torre, esq., U. S. dist. att'y, and E. B. Crockett, esq., for claimants.

60th quest. Who informed you that the dist. att'y wished to see you in respect to your testimony in this case?

332 Ans. Mr. Cipriano.

61st quest. What did he say to you when he applied to you to come and see the dist. att'y? State all he said.

Answer. He told me that the district att'y had sent for me; that I could be paid for my trouble and expense.

62nd quest. What did he tell you the dist. att'y wished to see you for?

Ans. He did not tell me what it was for.

63rd quest. Did you have any conversation with him (Cipriano) in respect to the title to this ranch?

Ans. No, sir.

64th quest. Had you before then at any time conversed with him on that subject?

Ans. No, sir.

65th quest. Did he never ask you at any time what you knew about the title to the ranch?

Ans. He never did.

333 66th quest. Has he said anything to you since your deposition has commenced in respect to your testimony?

Answer. No, sir.

67th quest. Have you ever had any conversation with Mr. Horace W. Carpentier in respect to this title?

Answer. No, sir.

68th quest. Did not Mr. Carpentier, some time ago, apply to you to purchase your interest in the ranch?

Answer. Yes, sir.

69th quest. What conversation passed between you at that time? State fully all what was said by both of you.

(Question objected to by the dist. atty. as being palpably irrelevant, seeking to give in evidence conversation between the witness and a third person not a party to the suit nor in any way connected with it.)

Answer. He told me he wanted to buy my rights or right in it;
and I told him that I did not know that I had any right in
334 it; that if he knew that I had a right in it, that we would
make a bargain.

70th quest. Did he ask you anything about the title which you got from the governor?

Answer. I do not remember.

71st quest. Did you tell him about the papers that you saw in the hands of Castro, the alcalde of which you have spoken?

Answer. I do not remember whether or not I said anything about that to him.

72nd quest. How long ago was it that Carpenter offered to buy your interest?

Answer. I do not remember when it was, but it is a considerable length of time.

73rd quest. Since that time have you had any conversation with anybody about the title before you were told that the dist. att'y wished to see you? If so, with whom?

Answer. No, sir.

74th quest. Had your brother Inocencio have a family in 1844, 1845, and 1846; and if so, where was his family in those years?

335 Ans. He had a family in those years. In the year 1844, I think, he and his family was in San Josė, where he was then sick. The year 1845 they were at the rancho in controversy in this suit. I think they were there in the year 1846 also. That was his only place of residence. I do not know this of my own knowledge, for I lived in a different part of the country.

75th quest. As your brother Inocencio was attending to the business of procuring the title to the rancho, and as you have testified that you did not see him in the years 1844 and 1845, how do you know that he did not procure the final title, or do you know that he did not?

Ans. Because it has not appeared. Because I have not seen it. I had nothing to do with matters relating to papers of any kind.

76th quest. State whether or not you had any information, after you saw the papers in the hands of Castro, that a final title had issued from the government. State any information you had on that subject.

336 Ans. I heard that a title had issue from the government, but I never saw it. I heard of it, but I had no interest in the matter at all.

77th quest. Had you sold your interest in the ranch to Garcia before you heard of the issuing of the title?

Ans. I sold it afterwards.

78th quest. Why did you feel no interest in inquiring that the title had issue?

Ans. We had no title at all; we had an order for the survey of the land. I felt no interest in it because I sold whatever right I had in it.

79th quest. Had you not sold your interest to Garcia before you heard that the title had issue, and was not that the reason why you did not enquire into it?

Ans. I sold my interest to Garcia after I heard that the title had been made.

80th quest. In what year was it that you heard of the grant having been made?

Ans. I do not remember when. It was an order, not a title.

337 81st quest. By whom were you told about it?

Ans. I remember of having heard of it, but no person never told me particularly about it; I heard it spoken of among other persons.

82nd quest. Why did you not inquire of your brother Inocencio about it?

Ans. Why should I ask him? He lived in one place and I in another; he did not visit me, nor did I visit him.

83rd quest. State all your reasons for believing that the final title did not issue.

Ans. I have no other than that I have not seen it.

84th quest. Did you make an affidavit or deposition which is on file in this cause?

Ans. Yes, sir.

85th quest. Look at the paper now shown you purporting to be your deposition, on file on the 21st Feb'y, 1857, and state whether that is the paper which you signed and to which you refer.

Ans. I know what it is; it is the same paper.

Direct examination resumed.

338 86th quest. Do you remember talking with the dist. att'y on the subject of this claim, and where and on what occasion did that conversation take place?

Ans. Yes; it was in his office.

87th quest. Why did you come to the city on that occasion?

Ans. I came here to give testimony in relation to the New Almaden mine.

88th quest. Do you remember the affidavit before referred to in the cross-examination, and who requested you to make it?

Ans. I do remember it; I made it at the request of Mr. Campbell; he came to me about it in a company with Mr. David P. Smith.

89th quest. Why did they say to you when they asked you to make this affidavit?

Ans. They asked me if it was true that I had sold my right to Garcia and my brother Miguel; and I do not remember whether or not they said anything more to me.

90th quest. Have you now any or what claim or interest in
339 this ranch?

Ans. I do not believe I will get anything; I consider myself as having no interest in it; I cannot tell; I may have an interest in it.

Cross-examination resumed.

91st quest. How can you have an interest in it if you have sold all your right and interest in it to Garcia?

Ans. I did sell; I have no right whatever; but when the title is finally passed upon we shall see whether there is anything coming to me or not.

his
JOSÉ + ROMERO.
mark.

Sworn to and subscribed before me this 5th day of November, A. D. 1858.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed Nov'r 5th, 1858.

W. H. CHEVERS, *Clerk.*

267

340 *Notice of testimony.*

In the district court of the United States for the northern district of California, *ss:*

INOCENCIO ROMERO *et al.*
vs.
THE UNITED STATES.

To Peter Della Torre, esq., U. S. district attorney:

You will please take notice that the deposition of Mariano Romero, a witness for the claimants in this cause, will be taken before W. H. Chevers, esq., United States commissioner, at his office, in the city of San Francisco, on Monday, the 22nd day of November instant, at 2 o'clock p. m. of that day, and proceeded with until completed.

Dated San Francisco, November 16th, 1858.

Yours, &c.,

CROCKETT & CRITTENDEN,
Attorneys for Claimants.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Wilfred W. Wiggins, being duly sworn, says tha he is clerk of the attorneys for the claimants in the within entitled cause; that on the 16th day of November, 1858, he served a copy of the within notice on P. Della Torre, esq., U. S. district attorney, by leaving
341 said copy in said Della Torre's office with his clerk therein.

WD. W. WIGGINS.

Subscribed and sworn to Nov'r 22nd, 1858, before me.

W. H. CHEVERS,
U. S. Comm'r.

Dep. of M. Romero.

United States district court, northern district of California.

THE UNITED STATES
ads.
INOCENCIO ROMERO.

SAN FRANCISCO, *Nov'r 22nd,* 1858.

On this day, before W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came Mariano Romero, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by John Argos, a sworn interpreter.

Present: Mr. Crockett, of counsel for the claimant.

342 *Questions by claimants' counsel.*

What is your name, age, and place of residence?

Answer. Mariano Romero; am 55 years of age; and reside in Juana Briones ranch, in San Mateo county, Cal.?

2nd. Are you acquainted with the tract of land called the Romero rancho, in Contra Costa county, Cal.?

Answer. I do.

3rd. Who petitioned Governor Micheltorena for a grant of the said rancho? State all you know in relation to the said petition.

Answer. My brothers Inocencio, José, and myself petitioned for the grant. Inocencio presented the petition to the governor, and the governor then enquired of the judge in San José whether they had sufficient motives for services rendered in order that such concession be made, and it was reported favorably of to the governor. The judge or authorities of San José reported favorably.

4th. State whether any papers were issued by the governor after the return of the informe. 343

Answer. Yes, sir. These papers were given me, and I sent them by Francisco Arce to my brother Inocencio.

5th. State whether or not those papers were the final title, or the espediente containing the order of the governor to put you and your brothers in possession.

Answer. They were the papers containing the order of Micheltorena giving us the possession of the land.

6th. Have you any information in respect to the issuing of the final title? Do you know whether or not the final title issued after the time that you received the order for the possession?

Answer. I knew from what Arce told me that the final title has issued, for he told me so. He told me in 1844 or 1845; I don't remember which.

7th. Where did you reside in 1844, and from thence up to within the last two or three months?

Answer. I resided in Monterey in 1844, and ever since then until within the past two or three months, when I commenced to live on Briones ranch. 344

8th. Where did your brothers Inocencio and José live in 1844, and for some years thereafter?

Answer. Inocencio, in 1844, lived on the Romero ranch, and until he sold his interest in it, and then he moved to the Juana Briones ranch, and José lived somewhere about Higuerá ranch, in Santa Clara county, in 1844, and since thence at Lomás Pacheco's ranch, in Alameda county, and now at the present time at the Hot Springs

9th. Who had the management of the business relating to the procuring of the title papers to the ranch?

Answer. My brother Inocencio.

10th. How often, if at all, did you see your brother Inocencio from 1844 to 1850?

Answer. I did not see him from 1844 until 1852.

11th. Have you any interest in the Romero rancho; and if not, when, and to whom did you dispose of it?

345 Answer. I have not. I sold my interest in 1852 to Mr. Campbell.

his
MARIANO + ROMERO.
mark.

Sworn to and subscribed, Nov'r 22nd, 1858, before me.

W. H. CHEVERS,
U. S. Comm'r.

Endorsed: Filed Nov. 22nd, 1858.

W. H. CHEVERS, *Clerk.*

Affidavit of E. A. Lawrence.

In the dist. court of the United States for the northern dist. of California.

THE UNITED STATES
vs.
INOCENCIO ROMERO *et al.*
No. 304.

E. A. Lawrence, being duly sworn, deposes that the transcript of the record in the above cause from the United States land commission was filed in this court on the 23rd day of October, 1855, and on the 23rd day of March, 1857, an order was made by the court that the proofs be closed and the cause submitted on the 30th day of the same month. On the 16th Sept., 1857, an opinion in the cause was
346 filed by the said judge, rejecting the claim. On the 20 Nov.,
1857, a motion was made by the claimants, on affidavits, to open the decree for further proofs; and on the 5th Dec., 1857, the motion was sustained and a rehearing granted. On the 10th July, 1858, the cause was argued and submitted. On the 14th October, 1858, an order was made allowing the names of the real claimants to be substituted in place of those who had sold and conveyed their interests since the original petition was filed, and also allowing either party to take further proofs. The last depositions taken on behalf of the United States were filed on the 5th November last, after which the claimants took a deposition on the 22nd Nov'r, since which time no proof has been taken on either side.

The foregoing are the facts as they appear from the minutes of the clerk; and deponent further states that several months ago the district att'y served a notice on the opposite counsel that several depositions would be taken on behalf of the government on a day named in said notice; but though the witnesses were present, the district attorney declined to take their depositions, and notified this deponent verbally that the government would take no further proofs, and
347 that he was ready to submit the cause.

E. A. LAWRENCE.

Sworn to and subscribed before me March 15th, 1859.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed March 15th, 1859.

W. H. CHEVERS, *Clerk.*

Deed of I. Romero and wife, to A. J. Tice.

This indenture, made and entered into this ninth (9th) day of October, in the year eighteen hundred and fifty-eight, by and between *Inocencio Romero* and *Maria Encarnacion Miranda de Romero*, his wife, of the county of Santa Clara, in the State of California, parties of the first part, and *Andrew Jackson Tice*, of the city and county of San Francisco, in said State, party of the second part, witnesseth:

That whereas the said parties of the first part, on or about the 6th day of December, A. D. 1853, by their deed of that date, and recorded in the office of the county recorder of the county of Contra Costa, in volume 3, book of land titles, page 488, conveyed to Domingo Pujol and Francisco Sanjurjo the certain real estate hereinafter particularly described. And afterwards, to wit, on or 348 about the 14th day of February, A. D. 1855 the said Pujol and Sanjurjo, by their deed of that date, and recorded in the office of the county recorder of the said county of Contra Costa, in "book of deeds, volume 4, page 278," conveyed the said real estate to James Wm. Tice; and afterwards, to wit, on or about the 8th day of August, A. D. 1855, the said James Wm. Tice, by his deed of that date, and recorded in the office of the county recorder of the said county of Contra Costa in "book 4 of deeds, on pages 363, 364, and 365," conveyed the said real estate to the party hereto of the second part; and whereas it is believed that the said first-mentioned deed from these parties of the first part to the said Pujol and Sanjurjo is defective in its execution or acknowledgment, and the said parties of the first part are desirous of curing such defect:

Now, therefore, in consideration of the premises and of the sum of one dollar to them in hand paid by said party of the second part, the receipt of which is hereby acknowledged, the said parties of the first part do bargain, grant, sell, convey, and release unto said party of the second part, and to his heirs and assigns, the real estate described as follows, to wit:

All the undivided one-third of the lands and rancho in said 349 Contra Costa county and State aforesaid, being the same lands and rancho granted to the parties of the first part and his two brothers, José Romero and Mariano Romero, by Governor Micheltorena, in the year eighteen hundred and forty-four, and being also the same lands and Rancho the claims for which was, at the date of the said first-named deed, to wit, on the said 6th day of December, A. D. 1853, number six hundred and fifty-four (No. 654) on the docket of the board of United States land commissioners appointed to ascertain and settle the private land claims in California, reference being had to the papers and proofs on file in said case for a more particular description of the lands and premises hereby intended to be conveyed.

The said parties of the first part retaining and reserving to themselves, however, all the covenants and stipulations contained in the said original deed of the said premises to said Pujol and Sanjurjo, the sole object and intent of this instrument being to render the said first-mentioned deed regular, and in all respects complete and without defect as to execution or acknowledgment.

To have and to hold the same, together with all and singular the tenements, hereditaments, rights, privileges, and appurtenances thereunto belonging, or in anywise appertaining unto the said
350 party of the second part, and to his heirs and assigns, forever.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

his
INOCENCIO + ROMERO. [SEAL.]
mark.

her
MARIA ENCARNACION MIRANDA DE ROMERO. + [SEAL.]
mark.

Executed in the presence of—
J. W. Tice.
B. S. Latrop.

Witness to signature of Maria Encarnacion Miranda de Romero—
L. C. Wittenmeyer.
N. B. Smith.

State of California,
County of San Mateo:

On this 9th day of October, A. D. one thousand eight hundred and fifty-eight, before me, B. S. Latrop, county clerk in and for said county, personally appeared Inocencio Romero, to me personally known to be the individual described in and who executed the annexed instrument, and acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my
351 [SEAL.] official seal the day and year first above written.
B. L. LATROP, *County Clerk.*

Recorded Oct. 12th, 1858, at 11 o'clock a. m., in book 7 of deeds, pages 30, 31, and 32, records of Contra Costa, county of California.
L. C. WITTENMEYER,
County Recorder.

State of California,
County of Contra Costa, ss:

On this eleventh day of October, A. D. one thousand eight hundred and fifty-eight, before me, L. C. Wittenmeyer, county clerk and clerk of the county court in and for the aforesaid county, personally appeared the within named Maria Encarnacion Miranda de Romero, satisfactorily proven to me to be the wife of Inocencio Romero by the testimony of N. B. Smith, a credible and competent witness by me duly sworn for that purpose, and personally known to me to be the person described in and who executed the annexed instrument, and the said Maria Encarnacion Miranda de Romero, wife of Inocencio Romero aforesaid, was by me duly made acquainted with the contents of the annexed instrument, and acknowledged to me, on an examination by me had apart from, separate, and without the hearing 352 of her said husband, that she executed the same freely and voluntarily for the uses and purposes therein mentioned, without fear, compulsion, or under influence of her said husband, and that she did not wish to retract the execution of the same.

Witness my hand and the seal of the county court of Contra Costa [SEAL.] county affixed the day and year in this certificate first above written.

L. C. WITTENMEYER,
County Clerk.

Endorsed: Filed for record, at request of A. J. Tice, October 11th, 1858, at 3½ o'clock p. m.

L. C. WITTENMEYER,
County Recorder.

Filed March 18th, 1859.

W. H. CHEVERS, *Clerk.*

Deed from Romero and wife to Pujol and Sanjurjo.

This indenture, made this twenty-sixth day of December, A. D. one thousand eight hundred and fifty-three, between Inocencio Romero and Maria Encarnacion Miranda de Romero, his wife, both of Contra Costa county, in the State of California, parties of the first part, and Domingo Pujol and Francisco Sanjurjo, of the city and county 353 of San Francisco, in the said State of California, parties of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of ($5,325) five thousand three hundred and twenty-five dollars, lawful money of the United States of America, to him in hand paid by the said parties of the second part at or before the unseling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, remise, and conveyed, and by these presents do grant, bargain, sell, release, remise, and convey, unto the said parties of the second part, and to their heirs or assigns forever, all the undivided one-third of the lands and rancho in said Contra Costa county and State aforesaid, being the same lands and rancho granted to the parties of the first part and his two brothers, José Romero and Mariano Romero, by Gov. Micheltorena, in the year 1844, and being also the same lands and rancho for which is now number 654, on the docket of the board of U. S. land commissioners, appointed to ascertain and settle private land claims in California, reference being had to the papers and proofs on file on said case for a more particular description of 354 the lands and premises hereby intended to be conveyed.

And it is herein expressly understood and reserved by the parties of the first part, and assented to agreed by the parties of the second part, that in the event the said lands and rancho shall be hereafter confirmed by the said board of U. S. land commissioners, then the said parties of the second part, their heirs and assigns, shall pay to the parties of the first part the further consideration of (3,000) three thousand dallars.

And it is herein further provided and mutually understood between the parties to these presents that this conveyance is made subject to all sales of lands heretofor made by the parties of the first part, the price or consideration for which has not being paid, shall be equally divided between the parties of the first part and the parties of the second part, their heirs or assigns, together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder
and remainders, rents, issues, and profits thereof: to have and
355 to hold all and singular the above mentioned and described
premises, together with the appurtenances, unto the said parties of the second part, their heirs or assigns, forever.

And the said parties of the first part, for themselves, their heirs and assigns, do hereby covenant and agree to and with the said parties of the second part, their heirs, executors, administrators and assigns to warrant and forever defend the premises hereby granted against the act or acts, claims or demands of themselves, the said parties of the first part, their heirs or assigns, or any other person or persons claiming or to claim the same by, through, or under him, them, or either of them.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

his
INOCENCIO + ROMERO.
mark.

her
MARIA ENCARNACION MIRANDA + DE ROMERO.
mark.

Signed, sealed, and delivered in the presence of—
GEO. M. JONES.
JUAN MANSO.

Then personally appeared before me the within named Inocencio
Romero and acknowledged that he signed the within instru-
356 ment of his own free will, and for the purposes herein named.
Also Maria Encarnacion Miranda de Romero, being by me examined by a sworn interpreter separate and apart from her husband, acknowledged that she signs it of her own free will and accord, without fear or compulsion from her husband.

GEO. M. JONES,
Justice of the Peace for Martinez Township,
Contra Costa county, State of California.

Recorded volume 3 book of land titles, page 488; recorded in the Contra Costa county the 28th of December, 1853, 8 o'clock a. m.

THOMAS H. BROWN,
County Recorder.

Received for record, at request of grantee, 26th Dec., 1853, at 5 p. m. Recorded the 28th Dec. 1853, at 8 o'clock a. m.

THOMAS H. BROWN,
County Recorder.

STATE OF CALIFORNIA,
County of Contra Costa, ss:

I, L. C. Wittenmyer, county clerk and ex officio county 357 recorder in and for Contra Costa county, do hereby certify that the foregoing is a true, full, and correct copy of an instrument now of record in my office, in vol. 3 of deeds, on pages 488, 489 and 490.

[SEAL.] Witness my hand and seal of the county recorder of said county this 9th day of September, A. D. 1858.

L. C. WITTENMEYER,
County Recorder.

Endorsed: Filed March 18th, 1859.

W. H. CHEVERS, *Clerk.*

Deed from Pujol and Sanjurjo to J. W. Tice.

This indenture, made the fourteenth day of February, in the year one thousand eight hundred and fifty-five, between Domingo Pujol and Francisco Sanjurjo, both of the city and county of San Francisco, State of California, parties of the first part, and James Wm. Tice, of the same place, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of $8,000, (eight thousand dollars,) lawful money of the United States of America, to them in hand paid by 358 the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, sold, remised, and conveyed, and by these presents do grant, bargain, sell, release, remise and convey, unto the said party of the second part, and to his heirs and assigns forever, all the undivided one-third of the lands and rancho in Contra Costa county, State of California, being the same undivided one-third bought of Inocencio Romero and his wife the sixth day of December, one thousand eight hundred and fifty-three, by the parties of the first part. Said undivided one-third being part of the same lands and rancho granted to said Romero and his two brothers, José Romero and Mariano Romero, by Micholterena, in the year (1844) one thousand eight hundred and forty-four; and being also the same lands and rancho the claim for which is now number (654) six hundred and fifty-four on the docket of the board of U. S. land commissioners appointed to ascertain and settle private land claims in California, reference being had to the papers and proofs on file in said case for a more particular description of the lands and 359 premises hereby intended to be conveyed. And it is herein expressly understood and reserved by the parties of the first part, and assented to and agreed by the party of the second part, that in the event the said lands and rancho shall be hereafter confirmed by said board of U. S. land commissioners, then the said party of the second part, their heirs and assigns, shall pay to the parties of the first part the further consideration of ($3,000) three thousand dollars.

And it is herein further provided and mutually understood between the parties to these presents that this conveyance is made subject to all sales of lands made by Inocencio Romero before said Romero sold said undivided one-third to the parties of the first part; the price or consideration of which sales that has not been paid shall be equally divided between the parties of the first part and the party of the second part, their heirs and assigns.

And the said parties of the first part, for themselves, their heirs and assigns, do hereby covenant and agree to and with the said party of the second part, their heirs, executors, administrators, and assigns, to warrant and forever defend the premises hereby granted, the act or
acts, claims, and demands of themselves, the said parties of the
360 first part, their heirs and assigns, or any other persons claiming
or to claim the same by, through, or under them, or either
of them; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof: to have and to hold all and singulur the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

F. SANJURJO. [SEAL.]
DOMINGO PUJOL. [SEAL.]

Signed, sealed, and delivered in the presence of Jos. W. FINLEY, witness to the signature of F. Sanjurjo, and also for the signature of Domingo Pujol.

STATE OF CALIFORNIA,
County of San Francisco, ss:

361 On this sixteenth day of February, A. D. one thousand eight
hundred and fifty-five, before me, Jos. W. Finley, a notary public in and for said county, personally appeared Francisco Sanjurjo and Domingo Pujol, personally known to me to be the individuals described in and who executed the foregoing conveyance, and severally acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed my official seal, in the county aforesaid, the day and year first above written.

JOS. W. FINLEY, *Notary Public.*

Recorded vol. 4, B deeds, Contra Costa county, page 278 to 280, 24th February, 1855, at 6 p. m.

THOS. H. BROWN,
By C. BREWERS.

Endorsed: Filed March 18, 1859.

W. H. CHEVERS, *Clerk.*

362 *Certified copy of deed from J. W. Tice to A. J. Tice.*

This indenture, made the (8th) eighth day of August, in the year of our Lord one thousand eight hundred and fifty-five, between James William Tice, parties of the first part, and Andrew Jackson Tice, parties of the second part, both parties being residents of the county of Contra Costa and State of California, witnesseth: That the said parties of the first part, for and in consideration of the sum of ($8,000) eight thousand dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and quitclaimed, and by these presents do remise, release, and quitclaim, unto the said party of the second part, and to his heirs and assigns, forever, all the undivided one-third of the lands and rancho in Contra Costa county, State of California, being the same undivided one-third bought of Domingo Pujol and Francisco Sanjurjo on the fourteenth day of February, A. D. one thousand eight hundred and fifty-five, by the parties of the first part, said undivided one-third being the equal undivided one-third of all that certain grant or parcel of land granted to Inocencio
363 Romero and his two brothers, José Romero and Mariano Romero, by Micheltorena, in the year (1844) one thousand eight hundred and forty-four, and being also the same land and rancho, the claim for which is now numbered (654) six hundred and fifty-four on the docket of the board of United States land commissioners appointed to ascertain and settle private land claims in California, reference being had to the papers and proofs on file in said case for a more particular description of the lands and premises hereby intended to be conveyed; and it is herein expressly understood and reserved by the parties of the first part, and assented to and agreed by the party of the second part, that in the event the said lands and rancho shall be hereafter finally confirmed by the government of the United States, then the said party of the second part, his heirs and assigns, shall pay to the party of the first part the further consideration of three thousand dollars; and it is herein further provided and mutually understood between the parties to these presents that this conveyance is made subject to all sales of lands made by Inocencio Romero before the said Inocencio Romero sold said lands to Domingo Pujol and Francisco Sanjurjo, and the price or consideration of which
364 sales has not been paid, shall be paid over to the said A. Jackson Tice, the party of the second part, or that part of the same that would have been due and payable to the said James W. Tice had he remained the owner of said rancho or land and this deed never had been executed, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances: to have and to hold and *and* singular

277

the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and his heirs and assigns, forever.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

JAMES W. TICE. [SEAL.]

Signed, sealed, and delivered in the presence of—
GEO. F. WORTH.

365 STATE OF CALIFORNIA,
County of Contra Costa, ss:

On this 14th day of August, one thousand eight hundred and fifty-five, before me, Geo. F. Worth, a notary public in and for said county, personally appeared James W. Tice, known to me to be the undivided described in and who executed the foregoing conveyance, and acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned

[SEAL.] In witness whereof, I have hereunto set my hand and affixed my official seal in the county aforesaid the day and year first above written.

GEO. F. WORTH,
Notary Public.

The foregoing instrument was filed and recorded, at request of A. J. Tice, August 14th, 1855, at 45 minutes past one o'clock p. m. In the original the words "of the first," in 3rd line; the words "of the second part," in 6th line; the words "and previous," in 34th line; the words "and the said party of the," in the 38th line, are erased.

THOMAS H. BROWN,
366 *Co. Recorder.*

STATE OF CALIFORNIA,
County of Contra Costa, ss:

I, L. C. Wittenmeyer, county recorder ex officio in and for the aforesaid county, do hereby certify that the foregoing is a true, full, and correct copy of an instrument now of record in my office in book 4 of deeds, on pages 363, 364, and 365.

[SEAL.] In witness whereof, I hereunto set my hand and affix my official seal this 9th day of September, A. D. 1858.

L. C. WITTENMEYER,
County Recorder.

Endorsed: Filed March 18, 1859.

W. H. CHEVERS, *Clerk.*

Transfer from Romero to Miranda.

This indenture witnesseth, for and in consideration of two thousand dollars to me in hand paid by Manuel Miranda, of Contra county, and State of California, the receipt of which sum of money is hereby acknowledged, I hereby sell, assign, and transfer unto the said Manuel Miranda all my right, title, and interest in and to the demands

367 which I have upon the Romero rancho, by virtue of the stipulation mentioned in the deed from me to Domingo Pujol and Francisco Sanjurjo, stated on the twenty-sixth day of December, A. D. 1853; also all claims due me by virtue of any sales I may or have heretofore made of said rancho, or parts thereof, as mentioned in the said deed above referred to; and I hereby authorize him, the said Manuel Miranda, to collect and receipt for the same in same manner as I might heretofore do.

Contra Costa county, State of California, August 10th, 1856.

his
YGNOCENCIO + ROMERO. [SEAL.]
mark.

In the presence of—
José Antonio Romero.

State of California,
County of San Mateo, ss:

On this fourteenth day of September, A. D. one thousand eight hundred and fifty-eight, before me, B. G. Latrop, county clerk in and for said county, personally appeared José Antonio Romero, personally known to me to be the same person whose name is subscribed to the annexed instrument as a witness thereto, who, being by me duly sworn, deposes and said that he resides in Santa Clara county; that he was present and saw Ignocencio Romero, known to him to 368 be the same person described in and who executed the annexed instrument as a party thereto, sign, seal, and deliver the same, and that he, the deponent, thereupon signed his name as a subscribing witness thereto.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

B. G. LATHROP,
County Clerk.

Endorsed: Filed March 18, 1859.

W. H. CHEVERS,
Clerk.

Stipulation of deeds.

In the district court of the United States for the northern district of California.

Inocencio Romero *et als.*
vs.
The United States.
} No. 304 of land calendar.

It is agreed that the execution of the following deeds be admitted, to wit:

1st. A deed from Inocencio Romero and wife to Andrew Jackson Tice, dated October 9th, 1858.

2nd. A certified copy of a deed from Inocencio Romero and 369 wife to Domingo Pujol and Francisco Sanjurjo, dated December 26th, 1853.

3rd. A deed from Domingo Pujol and Francisco Sanjurjo to James W. Tice, dated 14th February, 1855.

4th. A certified copy of a deed from James W. Tice to Andrew Jackson Tice, bearing date August 8th, 1855.

All of which deeds purport to convey to the respective grantees therein certain interests in the land in controversy in said cause.

5th. A transfer or assignment from Inocencio Romero to Manuel Miranda, bearing date August 10th, 1856, purporting to convey to said Miranda the benefit of certain reservations and stipulations on behalf of said Romero contained in the aforesaid, made by the said Romero and wife to the said Pujol and Sanjurjo.

The said deeds and documents being introduced only for the purpose of showing deraignment of title from the original alleged grantees to the present parties claiming interest in the cause.

Dated San Francisco, 17th March, 1859.

P. DELLA TORRE,
U. S. Att'y.

Endorsed: Filed March 18th, 1859.

W. H. CHEVERS, *Clerk.*

370 *Deed from J. Romero and wife to J. W. Jones and others.*

This indenture, made and entered into by and between José Romero and his wife, Maria Garcia de Romero, of the State of California, of the first part, and John M. Jones, William H. Mitchel, James T. Thompson, and Cornelius Yeager, parties of the second part, witnesseth: That whereas, on the 15th day of January, A. D. 1847, for a valuable consideration, and by an instrument in writing authenticated before John Burton, an alcalde in the Pueblo of San José, (and which by mistake bear date the 15th of January, 1847,) the parties of the first part sold and conveyed to one Francisco Garcia the one undivided sixth of that certain tract of land situated in the county of Contra Costa, known as the "Juntas," and lying between and bounded by the ranches of the deceased William Welch, of Juana Pacheco, of Joaquin Moraga, and of Bartolo Pacheco, the same having been a sobrante lying between and bounded by the said last-named ranches; and whereas, on the 11th day of November, A. D. 1851, in consideration of the payment of the sum of four thousand dollars, the said Francisco Garcia and his wife, Manuela Sepulveda de Garcia, by deed of that date, duly recorded in the recorder's office of said county of Contra Costa on the 13th day of November, 1851, sold and
371 conveyed the said undivided sixth of the said land above described to the said parties of the second part, their respective heirs and assigns, whereby they, the said parties of the second part, became vested with an estate in fee simple in said undivided sixth of said tract of land: Now, therefore, in consideration of the premises, and of the sum of two hundred dollars in hand paid to the said parties of the first part, the receipt whereof is hereby acknowledged, they, the said parties of the first part, have this day given, granted, and conveyed unto the said parties of the second part, and to their and each of their

respective heirs and assigns, the said undivided one sixth of the aforesaid tract of land, with all and singular the hereditaments and appurtenances; and the estate aforesaid of the said parties of the second part, in and to the said undivided sixth of said tract of land above bounded and described, is hereby forever ratified and confirned unto the said parties of the second part, and to their and each of their heirs and assigns forever. In witness whereof the said parties of the first part have hereunto set their hands and seals this ninth day of April, A. D. 1858.

his
JOSÉ + ROMERO. [SEAL.]
mark.

her
MARIA GARCIA + ROMERO. [SEAL.]
mark.

372 Signed, sealed, and delivered in the presence of—
D. W. MILLARD.

The words (two hundred) were interlined before signing.
A. MARSHALL,
Justice Peace.

STATE OF CALIFORNIA,
County of Alameda:

On this 9th day of April, A. D. 1858, personally appeared before me, a justice of the peace in and for the said county, José Romero and his wife, Maria Garcia de Romero, personally known to me to be the persons described in and who executed the foregoing instrument, who acknowledge to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; at the same time and place the said Maria Garcia, wife of the said José Romero, was made acquainted with the contents of said conveyance, and on an examination apart from and without the hearing of her said husband, acknowledged that she executed the same freely and voluntarily, without fear or compulsion or undue influence of her husband, and that she does not wish to retract the execution of the same.

373 Given under my hand and seal on the day and year above written.

ARUNAH MARSHALL, [SEAL.]
Justice of the Peace.

STATE OF CALIFORNIA,
County of Alameda, ss:

I hereby certify that Arunah Marshall, esq., before whom the within instrument was made and executed, and who has thereunto subscribed his name, was, at the time of so doing, a justice of the peace in and for the county aforesaid, duly commissioned and sworn, and that his signature thereto is genuine. I further certify that the said acknowledgment is made and executed in accordance with the laws of the State of California.

In witness whereof, I have hereunto signed my name and affixed [SEAL.] the seal of the county court of the county aforesaid, at San Leandro, this fifteenth day of April, A. D. 1858.

H. M. VESEY, *Clerk.*

Recorded April 19th, 1858, in vol. 6 of deeds, pages 368 and 369, records of Contra Costa county.

L. C. WITTENMEYER,
By M. B. HAMSON.

374 *Stipulation.*

It is stipulated that the within document may be read in evidence on the trial of the case of Inocencio Romero and others *vs.* the United States in the U. S. district court for northern dist. of California, the said document to be used only, however, for the purpose of deraigning the title of the claimants from the original claimants.

Dated at San Francisco, 25th March, 1859.

P. DELLA TORRE, *U. S. Att'y.*

Endorsed: Filed March 25, 1859.

W. H. CHEVERS, *Clerk.*

Order submitting cause.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the fourth day of April, in the year of our Lord one thousand eight hundred and fifty-nine—

Present: Hon. M. Hall McAllister, circuit judge; Hon. Ogden Hoffman, district judge.

375 INOCENCIO ROMERO *et al.*
vs.
UNITED STATES.
} No. 304.

On this day came as well the United States by the district attorney as the claimants by their attorney; and it appearing to the court that the proofs on both sides have been closed, and that the cause is ready to be finally submitted, and the claimants by their attorney having moved that the argument of the said cause upon the proofs be now proceeded with, and the district attorney having suggested to the court that he was not prepared to proceed with said argument on this day, and would not be ready to argue the same for some days to come; and it appearing further to the court that on two former hearings of the said cause both parties had argued the same on the law and the proofs, and that the proofs herewith filed are only cumulative, it is therefore ordered, on the motion of the claimants, by their attorney, that the said cause be, and the same is hereby, submitted to the court on the proofs on file in said cause and upon the briefs and oral arguments of counsel heretofore filed and made in said cause.

M. HALL McALLISTER, *Cir. Judge.*
376 OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed April 4, 1859.

W. H. CHEVERS, *Clerk.*

Decree rejecting claim.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco on Monday, the second day of May, in the year of our Lord one thousand eight hundred and fifty-nine—

Present: The Hon. M. Hall McAllister, circuit judge; the honorable Ogden Hoffman, district judge.

THE UNITED STATES
ads. } D. C. 304. L. C. 654.
INOCENCIO ROMERO *et al.*

This cause came on to be heard on appeal from the final decision of the board of land commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved on the 3rd of March, A. D. 1851, upon the transcript 377 of the proceedings and decision of the said board of commissioners and the papers and evidence on which the said decision was founded, and upon the further testimony and evidence taken and filed in this court, and it appearing to the court that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is by the court hereby ordered, adjudged, and decreed that the said decision be, and the same hereby is, in all things affirmed, and it is likewise ordered, adjudged, and decreed that the claim of the appellants is invalid, and that the same be, and hereby is, rejected.

M. HALL McALLISTER, *Judge, &c.*

Endorsed: Filed May 2nd, 1859.

W. H. CHEVERS, *Clerk.*

Order granting appeal.

At a stated term of the District Court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco on Monday, the second day of May, in the year of our Lord one thousand eight hundred and fifty-nine—

Present: Hon. M. H. McAllister, circuit judge; the honorable Ogden Hoffman, district judge.

378 INOCENCIO ROMERO
vs. } No. 304.
THE UNITED STATES.

On motion of Mr. Crocket, of counsel for claimants, it is ordered by the court that an appeal in behalf of the claimants herein to the Supreme Court of the United States be and is hereby allowed, and the said claimants are required to give bond on appeal in the sum of $250.

Endorsed: Filed May 2nd, 1859.

W. H. CHEVERS, *Clerk.*

283

Appeal bond.

District court of the United States, northern district of California.

INOCENCIO ROMERO *et als.*, appellants, *vs.* THE UNITED STATES, appellees.	D. C. 304. L. C. 654.

Know all men by these presents that we, Edwin A. Lawrence, Cornelius Yager, and Daniel Van Pett, of the State of California, are held and firmly bound to the above-named United States in the 279 sum of two hundred and fifty dollars, to be paid to the said appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated the 29th day of October, A. D. 1859.

Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the district court of the United States for the northern district of California:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

E. A. LAWRENCE. [SEAL.]
CORNELIUS YAGER. [SEAL.]
DAN'L VAN PETT. [SEAL.]

Signed, sealed, and delivered in presence of—
W. H. CHEVERS.

United States of America, northern dist. of California.

380 Daniel Van Pett, E. A. Lawrence, and C. Yager, parties to the above bond, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred ($500) dollars over and above all his just debts and liabilities.

E. A. LAWRENCE.
CORNELIUS YAGER.
D. VAN PETT.

Sworn to and subscribed this 29th October, 1859, before me.

W. H. CHEVERS,
U. S. Comm'r.

Approved.

OGDEN HOFFMAN,
Dist Judge.

Nov. 1st, 1859.

Endorsed: Filed November 1st, 1859.

W. H. CHEVERS, *Clerk.*

Order granting appeal in behalf of claimants.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco on Monday, the 11th day of November, in the year of our Lord one thousand eight hundred and sixty-one—

381 Present: The honorable Ogden Hoffman, district judge.

INOCENCIO ROMERO, appellant,
vs. } No. 304.
THE UNITED STATES, appellees.

And now, at this day, on motion of E. A. Lawrence, esq., of counsel for the claimant and appellant, made in open court, it is ordered by the court that an appeal in behalf of the claimant from the final decision of this court rendered in said cause at the December term, 1858, be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

And it is further ordered by the court that the appellant serve the usual citation according to law.

Endorsed: Filed November 11, 1861.

W. H. CHEVERS, *Clerk.*

Citation on appeal.

By the Hon. Ogden Hoffman, judge of the district court of the United States for the northern district of California, to Wm. H. Sharpe, esqr., U. S. dist. att'y.:

382 Whereas Inocencio Romero and others, claimants of the rancho Las "Juntas," containing five square leagues of land, in Contra Costa county, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the district court of the United States for the northern district of the State of California, made in favor of the United States against the said Inocencio Romero and others, claimants, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the 16th day of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of San Francisco, in the northern district of California, the sixteenth day of November, A. D. 1861, and of the independence of the United States the eighth-sixth.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Service of a copy of the within citation, and a copy of the appeal filed in this cause with the clerk of said court, is hereby admitted this 16th day of November, A. D. 1861.

WM. H. SHARP, *U. S. Att'y.*

Endorsed: Filed Nov'r 16th, 1861.

W. H. CHEVERS, *Clerk.*

383 I, William H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify the annexed and foregoing three hundred and eighty-two (382) consecutively numbered pages exhibit a full, true, and correct transcript of the record of proceedings before the late board of United States land commissioners, as the same is on file in my office, and of the papers, evidence, pleadings, orders, opinions, and decrees now on file in my office in the case of the United States *vs.* Inocencio Romero, No. 304.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said district court this 19th day of December, A. D. 1861, and of our independence the 86.

W. H. CHEVERS, *Clerk.*

Filed Jan. 29, 1862.

⊕

289

SUPREME COURT OF THE UNITED STATES.

No. 116.

INNOCENCIO ROMEO ET AL.,

vs.

THE UNITED STATES.

BRIEF FOR THE UNITED STATES.

SUPREME COURT OF THE UNITED STATES.

No. 116.

INNOCENCIO ROMERO *et al.*
vs.
THE UNITED STATES.

Brief for United States.

The claimants petitioned the board of land commissioners for the confirmation of the title 28 February, 1843.—*(Rec., p. 2.)*

The petition avers that Micheltorena, in 1844, (day not mentioned,) granted to Innocencio, José and Mariano Romero, in full property, the lands and rancho which is unoccupied in the neighborhood of the rancho of the Señor Moraga, Pacheco, and Will, being a remainder over and above what belongs to those ranchos, and refers, for a fuller description of the lands, to the papers and maps relating to the grant.

The petitioners further declare, that *copies of some of the papers* are herewith filed, and the *originals will be produced* and proved.

It is a noticeable feature of the petition, that it says nothing specially concerning the grant, except that it was made in 1844. There is no averment of its loss, and no profert of it as an existing paper, nor does it describe the land claimed nor mention the quantity. The reference to the papers for a fuller description is futile, for it will be seen that there is no description in them.

After hearing the evidence, the commissioners gave an opinion, *(Rec., p. 20,)* that it did not appear that any grant was ever issued; no equitable right to a confirmation was shown by the petitioners, and therefore the claim was rejected. From this decree an appeal was taken to the district court.

In the district court the decision of the commissioners was fully reviewed upon the evidence given before the commissioners, and upon all the additional evidence which the claimants chose to offer after the appeal. The judge of the district court delivered a very full opinion, reviewing the evidence, and concluding that no grant had ever issued. He says, truly, that the facts of the case are unmistakable. We call the attention of the court to this opinion. It is a fair and just synopsis of the case as it then stood.—*(See Rec., p. 48.)*

After this opinion was delivered, and after a decree in accordance with it rejecting the claim, the claimants moved the court to open the case and give them leave to produce further evidence. This application was granted; the decree was stricken out, and the additional evidence which the claimants avered to be in their power was heard.

The result was, that the court reaffirmed its previous opinion, and again rejected the claim as being without any just or true foundation.

From that decree of the district court the claimants took the present appeal.

In this case the question is again raised, whether parol evidence can be received of a Mexican grant in a case where the records of the former government do not show that any grant was ever made.

The United States are again called on to maintain the doctrine so often asserted by them, and so often declared by this court to be incontestible and true, namely, that every claim for land under a title derived from the Mexican government must stand or fall by the record. We insist again that—

1. It is a universal rule of public law that no act of a public officer is valid or binding on the government he serves, unless such act be made matter of public record.

2. It is known to have been the universal custom and usage of the Mexican government, in California and elsewhere, to make a record of every land grant.

3. The regulations of 1828—the law which prescribes the duties of the officers and defines the rights of grantees in all matters pertaining to grants out of the public domain—expressly declares that a record shall be kept of each title.

4. The archives of the Mexican government are in perfect condition, except that some of the registers (not all of them) have been lost, stolen, or destroyed; but the place of those books is supplied by an official list of the grants, agreeing exactly with the espedientes on file and marked by corresponding numbers throughout.

5. A grant without record evidence to show that it was issued must be void, because it is not according, but contrary, to the laws, usages, and customs of Mexico. It must be false, too, because the silence of the record is a solemn contradiction of any parol proof which can be produced in its favor.

There is and can be no doubt about these principles, if the Supreme Court of the United States is to be regarded as authority. On very many occasions it has been decided that record evidence of the fact that a grant issued was indispensable.

In *U. S.* vs. *Cambuston*, (20 How., 59,) it was held that the record must be produced, or its non-production satisfactorily accounted for.

In *U. S.* vs. *Sutter*, (21 How., 170,) the claimant alleged that there were two grants—one made by Alvarado in 1841, for eleven leagues, and another, in 1844, by Micheltorena for twenty-two leagues. The former was confirmed because there was a record of it, and the latter was rejected because it was supported only by parol.

In *U. S.* vs. *Nye*, (21 How., 408,) and *U. S.* vs. *Bassett*, (21 How., 412,) and in all the cases of claims under the Sutter general title, the court held the titles to be worthless. On page 414 Mr. Justice Campbell says, none of the documents are found in the archives. It is very clear that if the record had shown the existence of a grant, the decision in all those cases would have been different.

793

In *Fuentes* vs. *U. S.*, (22 Howard, 443,) Mr. Justice Wayne delivered the unanimous opinion of the court, and in language, strikingly clear and methodical, gives all the rules by which the court had been and would be governed in settling these claims. After that opinion it was thought that no counsellor would appear again for a Mexican claim unless he could show record evidence of the grant.

At the same term of the court, the case of *Galbraith* (22 How., 79) went back to the district court for want of record evidence. *Garcia's case* (22 How., 274) had an espediente, but no record which showed that a grant was issued; and it was rejected.

In *U. S.* vs. *Teschmaker*, (22 How., 392,) the claim was opposed, on the ground that there was no archive evidence, no registry; and it was rejected.

In *U. S.* vs. *Andres Pico*, (22 How., 406,) the claim failed, because there was no evidence of it among the Mexican archives.

U. S. vs. *Vallejo*, (22 How., 416,) was a similar case, decided in the same way, and for like reasons.

U. S. vs. *Osio*, (23 How., 273,) there was no registry of the grant. See remarks of Mr. Justice Clifford on page 279. The claim was rejected.

In *U. S.* vs. *Bolton*, (23 How., 341,) Mr. Justice Catron delivered the opinion of the whole court, that the record is the evidence of the grant, and the government has a right to demand it. In the absence of record evidence to show the grant, the claim has no legal foundation to stand upon.—(p. 350.)

U. S. vs. *Pico*, (23 How., 321,) was a case in which the record showed that the grant was made after the conquest. Rejected.

Luco et al. vs. *U. S.*, (23 How., 515,) had no record. Mr. Justice Grier delivered the opinion of the court, pronouncing it a forgery; and laid it down, as a rule of decision, (see page 544,) that without recorded evidence no grant would be confirmed; parol evidence would not be received to supply or contradict the records or to establish a grant of which the records contained no trace.

In *Palmer et al.* vs. *U. S.*, (24 How., 126,) the judgment of the court and the reasons for it are again given by Mr. Justice Grier to the same effect as in Luco's case. The record evidence is referred to as being that "on which alone the court can rely as speaking the truth."—(P. 127.) The claim was rejected, because the record did not show that a grant had been issued, and because the rule of decision in this court was, that parol evidence could not be received to supply it.

In *U. S.* vs. *José Castro*, (24 How., 346,) this whole subject received, at the hands of the chief justice, even a fuller exposition than had been given to it before. The preceding cases were cited, commented on, and affirmed, as settling the rule, that without a record of the grant there could be no confirmation of any claim.

The *U. S.* vs. *Neleigh*, (1 Black, 298,) brought up the same title as in the last case, (Neleigh was an alienee of Castro,) and Mr. Justice Grier gave the opinion of the court. The doctrine laid down in U. S. *vs.* Castro was repeated with additional emphasis.

U. S. vs. *Knight's administrators*, (1 Black, 227,) was a case in which it was contended that record evidence of the grant did exist. But it was not a record; but Mr. Justice Clifford, speaking for the court, declares that without a record no claim can be confirmed.

U. S. vs. *Vallejo*, (1 Black, 541,) in which Mr. Justice Nelson delivered the opinion, lays it down as settled law that a grant of public land not registered, recorded, or noted in the proper book, is inconsistent with the known practice of every well regulated government. There being no registry of this grant, the claim was rejected.

U. S. vs. *Galbraith*, (2 Black, 394,) was like *Knight's case*, and was decided the same way, Mr. Justice Nelson delivering the opinion of the court.

In *Chaboya* vs. *U. S.*, (2 Black, 593,) where the opinion was delivered by Mr. Justice Miller, the claim was rejected on the ground that the claimant had no legal title. Why? Because there was nothing in the Mexican records to show that a grant had been issued, and because the parol evidence, whether circumstantial or direct, could not be received to supply the want of a record.

In the case of *Castillero* vs. *U. S.*, (2 Black, 17,) among the many reasons given for rejecting the claim, the main one, perhaps, was the want, of a registry. The mining ordinances require a *registry* in a book, just as the colonization laws require that every grant shall be *recorded* in a book. It cannot be presumed that even the judges who dissented in that case meant to deny the general principle that a public concession must be recorded, for they themselve shad often before that time asserted the doctrine as strongly as it could be expressed in English words.

It will be seen that in every case where the Uuited States have opposed any claim on the ground that record evidence of the grant was wanting, this court has sustained the objection and rejected the claim. No instance can be found in the books where parol evidence has been held sufficient to make out a title. In most of the cases there was some ground of suspicion that the grant was fraudulent, and the parol evidence brought to support it false. Fraud, indeed, is a necessary inference in all such cases. The governor was bound by law to keep a record of all grants. It must be presumed that he performed his duty. In point of fact it is known that he was accustomed to do so. He did keep a record of his grants. That record is still preserved in perfectly good order. If any one asserts that a grant was made which cannot be found on the record his assertion must be false, and his grant fraudulent. This accounts for the fact that in nearly every case when an attempt has been made to contradict or supply the record by parol, other grounds for suspecting the honesty of the claim have been apparent.

It remains that we examine the evidence in this case, and see whether it shows any record to justify the court in sustaining the claim.

The documentary evidence relating to the original title consists of several papers purporting to be petitions and orders which the claimants seem to have *produced from their private custody*. There is no certificate from the surveyor general nor from any other officer that these papers were among the archives. They are produced by the claimants and shown to Antonio Maria Pico, a witness, and he is asked to testify whether the signatures to them are genuine or not.

These papers thus found by the claimants in their own pockets consist of the following:

1. A petition by Innocencio, José, and Mariano Romero, (three brothers,) soliciting a tract in the neighborhood of Moraga, Pacheco, and Will, being a sobrante of the ranchos owned by those persons, dated Monterey, January 18, 1844. —(*Rec.*, *p.* 10.)

2 A marginal order by Micheltorena that the secretary report, dated Monterey, January 18, 1844.—(*Rec.*, *p* 10.)

3. A decree of the governor, signed by Jimeno, that the first alcade of San José report summoning Moraga, Pacheco, and Will, dated Monterey, January 1844.—(*Rec.*, *p.* 10.)

4. Report by Antonio Maria Pico, that he had confronted the claimants with the owners of the adjoining lands, and they had no objections to the grant, but that the tract was claimed by one Francisco Soto, who, however, had not cultivated it for seven years, dated February 4, 1844, at San José.—(*Rec.*, *p.* 11.)

5. A representation, not signed by any body, addressed to the governor, recommending the grant, dated Monterey, February 4, 1844.—(*Rec.*, *p.* 11.)

6. An order by the governor, without date, that the judge of the proper district measure the land solicited in presence of the neighbors, and report the result, so that it may be granted.—(*Rec.*, *p.* 11.)

7. The claimants, on the 21st of March, at Monterey, again petition the governor that he grant them the land, either provisionally or otherwise, as he shall deem best. This petition states that the judge has been unable to execute the order for a measurement, and that they enclose the former petition, with the report of the secretary of state.—(*Rec.*, *p.* 12.)

[Several curious things are to be noted here. The report of the alcalde, Pico, is dated at San José, and the report of the secretary, at Monterey, on the same day. In this second petition the governor's decree is spoken of as being also dated on the same day. It appears, too, by this petition, that the first petition, and the reports and decrees and orders upon it, were none of them filed in the secretary's office. They were enclosed by the applicants in the second petition.]

8. On the 23d March Jimeno reports to the governor that he thinks the order for measuring the land should be carried into effect. When that is done, Romero can present himself, with Soto, who says he has a right to the same tract.—(*Rec.*, *p.* 13.)

9. Thereupon the governor orders that everything be done agreeably to the secretary's report.—(*Rec.*, *p.* 13.)

[Here everything stops for three years. No further proceedings were had until 1847, nearly a year after the conquest.]

9. A petition was presented 28th May, 1847, to John Burton, American alcalde of San José, signed by José Romero, setting forth

that in 1844 an order had been made for measuring the land called *Juntas*—which order was never carried out—and begging for a testimonial of the reports of 1844, "*so that we can be granted the said lands.*"—(*Rec.*, *p.* 14.)

10. Statement of Antonio Maria Pico that he was alcalde in 1844; that the neighbors did not object to the grant which the Romeros wanted.—(*Rec.*, *p.* 15.)

11. On 28th May Burton orders measurement to be made.—(*Rec.*, *p.* 15.)

12. It seems that Burton had found among the papers of his office an order of the governor, signed by Jimeno, and dated March 23, 1844, directing a survey to be made of lands solicited by the Romeros. This was addressed to Pico, the then alcalde, and was manifestly intended to further the execution of the governor's order dated that day.—(*Rec.*, *p.* 16.)

13. On the margin of Jimeno's old order Burton wrote an order of his own that the lands should be measured and the parties take possession. This order of Burton's is dated 9th April, 1847.

14. Previous to the date last mentioned, (on the 31st of March, 1847,) José and Inocente Romero had presented a petition to Burton, the alcalde, setting forth that they had, some years before, *solicited* a piece of land *adjoining Mariana Castro and the deceased Will*; that the governor had ordered Castro's land to be measured, but the measurement never was made, as there has been no occasion. They add they *have no place whatever* for their stock.—(*Rec.*, *p.* 17.)

15. Still earlier than this, (15th Jan., 1847,) Inocente Romero had made an act of sale before Burton, transferring *one-half the land he had solicited* to Maria Garcia for $60, with a stipulation that, *if the government did not grant the land in ownership*, Garcia should not claim repayment of the $60.—(*Rec.*, *p.* 18.)

16. December 27th, 1847, Dimmock, Burton's successor as alcalde, makes an order for establishing boundary lines between Peralta and the Romeros; directs Lyman to make a survey.—(*Rec.*, *p.* 19.)

17. May 9th, 1849, José Romero declares in writing that he has "sold his ownership to the lands" (no description of them given,) to José Miguel Garcia for $1,000, which he binds himself to return "if any claim should arise to said lands."—(*Rec.*, *p.* 18.)

This is the documentary evidence. None of the papers appear to have come from the office where the land records were kept. The alcalde's orders and the acts of sale came from the alcalde's office; and the petitions to the governor, with his marginal orders and those of the secretary, together with the reports, all came from the private custody of the claimants. There is no reference to any such grant in the Toma de Razon for 1844, which is in the office, nor in Jimeno's list.

The papers produced by the claimants not only contain no evidence of a grant, but *they show affirmatively that none was made.*

The lands solicited were not described or designated so that the governor could make a grant. Neither the quantity nor situation is mentioned; no natural boundaries are given, and no artificial lines are referred to. The only thing the governor could do was what he did—that is, order a measurement. This was necessary, not only because the governor decreed that no grant should issue without it, but because a grant without a survey, or without any better description than what was contained in the petition, would have been utterly void.

But this survey or measurement, without which the governor could not and would not grant the land, was never made. The claimants admit that fact in their petition to the alcalde in 1847. All the acts of the parties and of the alcalde in that year show that no survey had then been made. The claimants expressly say so in their petition, on page 17. To this day the land, which is the subject-matter of the alleged grant, remains incapable of being identified or described. Even in the claimants' petition to the land commission, the situation, boundaries, or quantity, are not mentioned, nor is any description given, on which the court could make a decree.

Moreover, the claimants admit, in their petition to the alcalde, (p. 14,) that no grant had then been made; they ask that a measurement be made, agreeably to the governor's order of 1844, "*so that we can be granted the said lands.*" In their other petition, on page 17, they say, not that a grant had been made, but that they had solicited a grant; that the governor had ordered it to be measured; but this had never been done, and in consequence they had no land for their stock.

On page 18 you find the deed of José Romero to Maria Garcia, dated 15th January, 1847, in which the grantor states that he had, in 1844, *solicited* jointly, with Innocencio, a piece of land—not that it was *granted*—and stipulates with the vendees what shall be their respective rights *if the government grants it in ownership*, and what shall be done *in the contrary case.*

In 1849 Innocencio Romero sells out his ownership for $1,000, but does not refer to the land as granted.

The claimants do not pretend that they have a title, unless a grant was made before the conquest; that is, before the 7th of July, 1846. They put their case upon the ground that, in point of fact, they had a grant made to them by Micheltorena in 1844. This they do not undertake to show by the record. They produce certain papers which amount to nothing, whether they were found in the surveyor general's office or elsewhere. If they were in the office they were mere loose, unrecorded papers, of no value as evidence, and having no probative force whatever.—(*Osio's case*, 23 How., p. 273; *Knight's case*, 1 Black., 227; *Galbraith's case*, 1 Black., 394.)

Those documents, assuming them to be evidence of all they contain, disprove the claimants' case. They show that the governor, for good and sufficient reasons, decreed that he would not make a grant until the land was measured, and that the land was never measured. Instead of showing a grant, they show that a grant was distinctly refused.

The subsequent acts of the parties before the alcalde, prove *their own most unequivocal admission* that no grant had been made.

Now, what do they rely on to contradict this record, and to disprove their own admissions? Arce and Gomez are called to prove that a grant was issued. These two men are in no respect better than Moreno, whose testimony has often been rejected when used in this way. This court has many times said that the evidence of Mexican officers, to supply the want of a record, could not be admitted, and the reasons upon which the rule is founded are irresistible.

Then they call the usual number of witnesses to prove that they *heard* of a grant. Some others swear that they *saw papers* in the hands of the claimants, which were said to be a title. Another set go a little further, and testify that they looked at them. One or two professed to have examined them, and become convinced they were genuine. The evidence most to be relied on is that of certain practicing lawyers, who say they examined Romero's title and believed it to be good, and heard other lawyers express the same opinion.

Certainly it cannot be necessary to argue that such evidence is insufficient. It is unworthy the attention of any court. The record shows that no title was ever made. If, therefore, a paper purporting to be a grant is produced, the conclusive presumption must be that it is a fabrication. But a gentleman of the bar happens to recollect that on a certain occasion he saw a grant which he and others then believed to be genuine. Their judgment was wrong, because it was made up without knowing the important fact that the record proved it to be fictitious. But that judgment, formed by a lawyer years ago, without evidence, is now used to control the judgment of ten other lawyers, who have the evidence regularly before them. I think no attempt has ever been made before to establish a disputed matter of fact by the mere opinion of a lawyer.

Those gentlemen were imposed upon by some fabricated grant, or else their memories have failed them. Gomez and Arce have, without doubt, committed wilful perjury. Gomez swears that he himself noted it on the Toma de Razon. That book is here, and contradicts him in the throat.

The counsel for the claimants virtually give up the case. In their brief (p. 6) they meet the objection, grounded on want of registry, by saying, "*if the book of these entries* was *produced*, giving the grants in the successive order in which they were made, and the grant to the Romeros was not named in its place, *the implication would be against its genuineness.*" But the book, say they, is lost, and Gomez swears the entry was made.

Now, mark the answer. The book is not lost; it is here; it does contain a registry of the grants made in 1844, in their regular order; no grant to the Romeros is named; the implication against its genuineness is conclusive; Gomez is a false witness, and so is Arce.

EDWARD BATES,
Attorney General.
J. S. BLACK,
Special Counsel.